

The  
Historie  
of  
TITHES

That is,

The *Practice* of PAYMENT of them.

The *Positive* LAWS made for them.

The OPINIONS touching the *Right* of them.

A REVIEW of it

Is also annext, which both *Confirms* it and directs in the *Use* of it.

By I. SELDEN.

*Nec partis studijs agimur. Sed sumsumus arma  
Consilij inimica tuis, IGNAVIA fallax!*





To the most honord  
S<sup>r</sup> ROBERT COTTON  
of Connington  
Knight and Baronet.

Noble Sir;

**I***V*stice, no lesse then Obseruance, vrges  
me to inscribe this Historie of Tithes to  
your name. So great a part of it, was lent  
me by your most readie Courtesie and able  
Direction, that I restore it rather then giue it  
you. And it cannot but receiue an increase of  
estimation from your interest thus seen in it.  
For to haue borrowd your help, or vsd that  
your inestimable Library (which liues in you)  
assures a curious Diligence in search after  
the inmost, least known and most vsfull parts  
of Historicall Truth both of Past and Pre-  
sent Ages. For such is that Truth which your  
Humanitie liberally dispenses; and such is  
that which by conference is learned from you.  
such indeed, as if it were, by your example,  
more sought after; so much head-long Er-  
ror, so many ridiculous impostures would  
not be thrust on the too credulous, by those  
which stumble on in the Rode, but neuer with  
any care looke on each side or behind them.

that is, those which keep their Vnderstandings  
alwaies in a weake Minoritie that euer  
wants the Autoritie and Admonition of a Tu-  
tor. For, as on the one side, it cannot be doub-  
ted but that the too studious Affectation of  
bare and sterile Antiquitie, which is nothing  
els but to be exceeding busie about nothing,  
may soon descend to a Dotage; so on the o-  
ther, the Neglect or only vulgar regard of the  
fruitfull and precious part of it, which giues  
necessarie light to the Present in matter of  
State, Law, Historie, and the vnderstanding  
of good Autors, is but preferring that kind  
of Ignorant Infancie, which our short life  
alone allows vs, before the many ages of for-  
mer Experience and Obseruation, which may  
so accumulat yeers to vs as if we had liud euen  
from the beginning of Time. But you best  
know this; in whom that vsefull part is so  
fully eminent, that the most learned through  
Europe willingly acknowledge it. and so o-  
pen bath your courtesie euer made the plen-  
tious store of it to me, that I could not but thus  
offer you whatsoeuer is in This of mine own  
also, as a symbole of some thankfulness. It  
was at first desind to you. And howeuer  
through the hastie fortune that (I know not  
why) it sufferd at the Presse, some pieces of  
it haue been dispersd without the Honor that  
your

your Name might adde to them; I shall be yet euer  
so ambitious of that Honor, that the whole shall ne-  
uer (for so much as I can preuent) be communicated  
without this prefixt testimonie of Dutie to you. Re-  
ceiue it fauorably, Noble Sir; and continue to me  
that Happinesse which I enioy in that you neither re-  
pute me vnworthy of your Loue, nor permit me in  
Ignorance when I come to learn of you.

From the Inner Temple,  
April. IV. 1650. DC. XVIII.

## THE PREFACE.

**I**T hath euen so happend with not a few of the Malicious (what through lazie Ignorance, what through peeuiſh Ielouſie) at their firſt ſight or hearing of the name of this *Hiſtorie of Tubes*, as it was wont with thoſe raw Nouices, that, vpon their firſt admiſſion to the ſacred Myſteries of the Gentiles, troubled and frighted themſelues with a world \* of falſe apparitions while they thought of what they ſhould ſee in the inmoſt Sanctuarie at the vnknown preſence of their Deitie. And doubtleſſe, the Prieſt had not a litle work to perſwade them that what they ſhould there meet with, was not an vnluckie *Empuſa*, not a formidable *Mormo*, not a wanton *Cobalus*, not a miſchieuous *Furie*, not indeed any thing that their idle brains, being ſuch meer ſtrangers to the abſtruſeſt parts of Truth, had faſhiond out. The many fancies that Malice, Ignorance, and Ielouſie haue framd to themſelues touching this of Mine, haue been no leſſe ridiculous; and ſome equally fearfull, but equally falſe. And I muſt here firſt play the Prieſt alſo, and ſo cleer, if it were poſſible, thoſe Fancies, by proteſting that it is not written to *proue*  
<sup>1</sup> *that Tubes are not due by the Law of God*; not  
<sup>2</sup> *written to proue that the Laitie may detaine them*,  
<sup>3</sup> *not to proue that Lay bands may ſtill enioy Appropriations*; in ſumme, not at all *againſt the maintenance of the Clergie*. Neither is it any thing elſe but it ſelf, that is, a meer Narration, and the *Hiſto-*  
rie

\* *Proculus in Platonicis, Theolog. lib. 1. cap. 3. & lib. 3. cap. 18.*

*rie of Tubes.* Nor is the law of God, whence Tithes are commonly deriud, more disputed of in it, then the Diuine Law, whence all Creatures haue their continuing subsistence, is inquired after in *Aristotles* historie of liuing Creatures, in *Plinies* Naturall historie, or in *Theophrastus* his historie of Plants; or then the Iustice of the old Courts of *Rome*, is examin'd in *Brodeaus* his historie of them, or the conuenience of the Ciuill and Canon Laws in that of *Riuallius*. Nor was any thing, that belonged to the Title, purposely omitted. Nor was any piece of it stolne from any other mans notes. That as the rest also hath been most maliciously imputed by some that so impudently dare coniecture (though they be farre enough from being either--*arte aut scientia Diuini*) and as iudiciously censure it or me, as those in *Lucian*, could *Euripides*, that were weekly stark mad in Rime till Winter, by reason of what they had heard of his Tragedies in Summer, and could neither iudge at all of what they said nor yet possibly hold their peace. But they know, there are neuer wanting long eares readie stretcht out to base detraction; and that animates them. I know not how otherwise to confirm these protestations then by sending him, that beleeues me not here, to the view of the whole. He may be there further satisfied. and shall then see also that it is not of the Pitch of the Doctrine of the Breuiarie, or within the compasse of Pocket-learning. Nor will it, I think, looke like what were patcht vp out of *Postils*, *Polyanthreas*, common place

place books or any of the rest of such excellent Instruments for the advancement of Ignorance and Laziness. Nor is any end in it, to teach any Innovation by an imperfect patterne had from the mustie Reliques of former time. Neither is *Antiquitie* related in it to shew barely what hath been (for the sterile part of *Antiquitie* which shews that only & to no further purpose, I value even as slightly as dull Ignorance doth the most precious and usefull part of it) but to giue other light to the Practice & doubts of the present. Light, that is cleer & necessarie. nor could such as haue searcht in the Subiect see at all often, for want of such Light. But *illos non peto, piscem peto*. Neither hath it at all wanted the most approving censures of such as are of choicest Learning, ablest Iudgment, and truly *Decumatisimi* aswell in worth as Title. Nor is it at all materiall what any one shall cast on it through his secure confidence only, in any of those old ensignes of dissembled Ignorance or Grauitie, the Beard, the Habit, and Title. It is for such to learn by, not at all to censure. And none of the Ingenuous and Learned, that read it, wilbe backward, I think, to allow it for Truth, as he did that first licenced it for the Presse with *Ita est* & subscription of his Name.

But wee leaue this preposterous Admonition in Negatives (yet by reason of the head-long importunitie of such as haue in great number already misconceiud it, they were necessarie and could not elsewhere haue had so fit place) and shortly thus delineat what it is by the end and purpose

\* Isidor. *Pelusiota*  
lib. 1. Epist. 92.

pose of writing it; by the *Argument* of it; by the *Course* of composing it; and by the *summe of performance* in it in behalfe of the *Clergie*.

For the first; we find that in the frequent Disputations about Tithes, not only Arguments out of holy Writ for prooofe of a *Diuine right* to them, but matter also of *Fact*, that is, *Practice* and *Storie*, is very often vsed; as the *kinds of payment* of them among the *Ebrews*, among the *Gentiles*, the *Maintenance of the Church* in the *Primitiue times*, the *Arbitrarie Consecrations*, *Appropriations* and *Infeodations* of them in the *middle times*, the *Payment of them at this day* in the *seuerall States of Christendom*, together with the *various Opinions* and *positive Laws* touching them. For, *Opinions* and *Laws*, as they are related only and fall vnder the *Question* of what and whence they were, are meerly of *Fact*. And proofs are hence often drawn to confirm sundrie occurrences in inquirie for the truth on either side. That of the *Diuine right* of them is so wholly a point of *Diuinitie* and handled so fully by diuers *Schoolemen*, so imperiously by most of the *Canonists*; and so confidently by some of our *late Diuines*, that what ever could be said touching that only, by inference out of the holy Text (which must be the sole triall of it) would but seem taken from some of them which haue so purposely disputed it. Neither were that so fit to be medled with by any as by a profest *Diuine*. But for that other part which falls vnder *Historie*, there is not one of them all which haueing boldnes enough



c. Aelian. vol.  
 III. lib. 13.  
 cap. 32.

to aduventure on it (while he disputes withall of the *diuine right*) shews not also too much either Ignorance or Negligence in talking of it, being v-  
 sually deceiud and deceiuing in it those most of  
 Readers that giue their Historicall faith captiue  
 to bare Names and common reputation. And as in  
 that old picture of *Homer* the rest of the follow-  
 ing Poets greedily swallowd what euer he had vo-  
 mited forth; so among these, one so rashly receiues  
 herein error from another, and so increases it, that  
 there was neuer found a better example of the old  
 prouerb *Sardi Venales*, or worse and worse, then  
 in most of their multiplied pamphlets of it. which  
 of them relates towards what is fit to be known  
 touching the paiment among the *Ebreys*? among  
 the *Gentiles*? among *Christians* of former time?  
 nay, which of them seem to know or to haue heard  
 of the chief *human positive Laws* made for Tithes?  
 yet would they gladly vse them if they had them.  
 where is there among them an ingenuous discou-  
 rie of the *various Opinions* of past Ages that be-  
 long hither? who of them once touches the right  
 ancient course of setting Tithes at first in Mona-  
 steries, Colledges, or other such Corporations, by  
*Appropriations* and *Consecrations* of them? who  
 of them tells vs other then meer fables, while hee  
 talks of the originall of *Infeodations*? and with  
 what patience can you read those which as great  
 Doctors talke of *Exemptions*, and pretend them-  
 selues to the world for such as discover the most  
 secret curiosities, or *cornicum otulos configere*, tell

v

vs of four Orders exempted, and make the *Hospitalers* and those of *S. Johns of Ierusalem* to be two of them, with other such most grosse and ridiculous absurdities? and it is a common, but most de-  
 ceiuing argument among them, affirmatiuely to  
 conclude *Fact* or *Practice* of Tithing from what  
 they see ordaind for Tithes in any old *Canon* of the  
 Church. as if euery thing so ordaind, necessarily  
 had also a following vse. it being indeed frequent  
 enough to find *Canons* directly contrarie to fol-  
 lowing *Practice*; and that euen in the proceedings  
 of the *Canon Law*, which (as the body of it is)  
 was neuer receiued wholly into practice in any  
 State, but hath been euer made subiect in wharso-  
 euer touches the temporalties or maintenance of  
 the Church (which come from Lay men) to the va-  
 rietie of the secular Laws of euery State, or to Na-  
 tionall customes that crosse it. Is it enough to  
 proue that Parish Churches, in *England*, were re-  
 gularly euer to be repaired by the Parsons, because  
 the generall *Canon Law* is so? or that a Clergie  
 man might not haue bequeathd any chattels wher-  
 in he had right in respect of his Church, because  
 also by that *Law* he might not? In *England*, ge-  
 nerall customs of the contrarie in both cases still  
 held, and in many other as you see in *Lindwood*,  
 who knew both the generall practice here and the  
*Canons*, and often also reaches their differences in  
 other cases. very many like may be found in other  
 States, by comparing their immemoriall customs  
 and old ordinances that are against the *Canons*,

d Extr. tit. de Es-  
 clef. adific. c. 4.  
 de his,

e Extr. tit. de offic.  
 in locis Ordinariis  
 c. 4. cum vobis,

f Lindwood c.  
 Nullus tit. de con-  
 suetudine. & tit.  
 de officio Archi-  
 diaconi c. Archidia-  
 conis. verb. repara-  
 tione. & de Testa-  
 mentis c. si Cleri-  
 calis, verb. sequitur.

g. Vilellis virosq;  
in Can. Com. Chal.  
c. d. 12. & 6. m  
Trullo 18. & 55.  
& Balsamon Chal.  
c. d. Can. 15. & 18.  
p. et id quod de  
deapio & Gala-  
dio de scopacum  
Zoffius in peren-  
tione, subiang-  
tor Concilio Ger-  
maginensi  
h. Sicut, Com-  
matar. lib. 2.

and that both in the Eastern and Western Churches. and for the Eastern Canon Law; passages are found to this purpose in *Zonaras* : and *Balsamon*, the two chief and ancient Canonists of that part. The Laitie at pleasure commonly limited the Canon Law especially where it toucht their dignities or possessions (and that aswell before *Luther* so derogated from the autoritie of it by burning it at *Wuteberg* in a publique assembly, in despite of the Pope, as after) which might be manifested by a world of examples. but it is most cleer to all that know Historie. To argue therefore from affirmative Canons only to Practice, is equall in not a few things (and especially in this of Tithing) to the prouing of the Practice of a custom from some consonant Law of *Plato's* common wealth, of *Lucians* men in the Moon, or of *Aristophanes* his Citie of Cuckoes in the clouds. To supply therefore the want of a full and faithfull collection of the *Historicall* part, was the end and purpose why this was composd which might remaine as a furnisht Armorie for such as inquire about this Ecclesiastique Reuenue, and preferring Truth before what dulling custom hath too deeply rooted in them, are not vnwilling to change their old akorns for better meat.

As touching the *Argument* of it, the whole bo-  
ing XIV. Chapters, the first VII. are thus filled.  
the first hath what is, in best autoritie of the an-  
cents, belonging to those Tithes paid before the  
*Leuiticall* Law. the second the severall kinds paid

by

by the *Jews* vnder the Law. and this from *Ebrev*  
*Lawiers*. The *third* shews the Practice of the *Ro-*  
*mans*, *Gracians*, and some other *Gentiles*, in pay-  
 ing or vowing them. Then the whole time of Chri-  
 stianitie being quadripartitly deuided (with al-  
 lowance of about XX. yeers more or lesse to euery  
 part) takes vp the next *Four* Chapters, in which  
 the *Practice of payment* of Tithes, *Arbitrarie Con-*  
*secrations*, *Appropriations*, *Infeodations* and *Ex-*  
*emptions* of them, establishment of *Paxochial right*  
 in them, as also the *Laws both Secular and Eccle-*  
*siastique*, with the *Opinions* of *Diuines* and *Can-*  
*onists* touching them, are in their seuerall times ma-  
 nifested; but so only, that whatsoeuer is proper to  
 this Kingdom of *England* either in *Laws* or *Prac-*  
*tice*, either of *Payment* or of *Arbitrarie Consecra-*  
*tions*, *Appropriations*, or *Infeodations*, or establish-  
 ment of *Parechiall right*, together with a Corol-  
 larie of the *ancient Iurisdiction* whereto they haue  
 been here subiect, is referud all by it selfe to the  
 next *Seuen* Chapters. But euery of the *XIV.* haue  
 their Arguments prefixt, which may discharge me  
 of further declaration in this place. By this time,  
 I trust, you conceiue what the name of *Historie*  
 in the Title pretends, and the *Tubes* spoken of  
 purposely in it (for perhaps it is needfull to admo-  
 nish that also) are only such as, either haue been  
 paid, vowd, or dedicated to holy vses, or els giue  
 light to the consideration of the performance or  
 omission of such payment. Neither the *Decime*  
*Saladine*, nor the *Decime Papales* (which were  
 wont

wont to be imposed) nor the *Decimalium* in the Imperials, nor the old *ratio Decimarum* vpon the *Lex Pappia*, haue had place here, nor the like, which are no more to this subiect then the Tithes paid to the Crown by our Clergie, or by those of the Boroughs by grant in Parliament, or the *Terrages* in Tenths referud by Lessors often in *France* and *Spain*, or the Tenths anciently paid in some places, as Impost vpon Merchandise, or that old custom of *England*, in paying the *Aurum Regine*, that is a Tenth part of as much mony to her as was giuen at any time to the King, or other such. Nor had the Tithes of houses in *London* place here otherwise then as they occurre in those Acts of Parliament and the Decree vnder *Henrie* the eight, that mentions the Ministers maintenance by the name of Tithes. For before that Decree, howeuer the LII. farthings paid on Sundaies only were neer the iust Tithe of euery *Xs*. Rent (that is about  $\frac{1}{2}$ .) and were perhaps thought on by that name (as may be collected out of *Lindwood*) yet these ioid with the other Offerings of great Festiuall daies, made vp indeed only a certain competencie of maintenance, but could not properly be reputed among Tithes. neither in regard of their *Value*, nor (as compar'd with the ancient institution of Tithes among the Iews) in respect of their *Nature* For their *value* came to much more then a Tithe, as also that doth which hath the name of Tithe at this day in *London*. neither is there reason enough why the LII. farthings that were offered

on

i De eare consula. si plura velis, Isocelinum de Braco-land, cap. 24. Ms. in Bibl. Cottoniana & Codicem illum Germaſii Tylburienſis dictum in Scaecartii Archivis.  
k Chap. 8. §. 39.

on Sundaeies should be ſeuerally, and as deuided from the other Offerings, thought on to this purpoſe. And for their *Nature* before theſe Acts and the Decree; I here offer only what I find in a ſhort diſcourſe, titled, *A Deuiſe how the Curats of London may be provided of ſufficient Inuings*, written vnder *Henrie* the eight, and remaining yet among the Records of the Exchequer. the Autor of it firſt ſhews that all Miniſters of Gods word ſhould giue freely their labours in the Church, and be maintained of the Tithes of the free gifts of the earth; as of Cattell, Corne and Fruit; which he ſuppoſes is as freely giuen them by the Almightye, through the labour of the people, as the preaching of the Word and adminiſtration of Sacraments is to the people through the labour of the Miniſters. But he permits not that any money or other profit, being not *living gifts*, as he calls them, is by the Law of God Tithable. ſo that where no ſuch *living gifts* and increaſe are, there no Tithes (as Tithes) are payable to them; as he concludes. Nor indeed is any mention of other Tithes in the *Leuiticall* Law, then of the increaſe of the earth in Fruit and Cattell, that is of the gaine only out of thoſe more naturall Trades (which <sup>1</sup> *Aristotle* elegantly ſtiles *ἡ ἀντιβολὴ ἐκέρται τῶν ἰσχυρίων*) of tilling the Earth and breeding of Cattell and that which holy Writ calls תרומה *Theboah*, that is, *increaſe* or *revenue*, where the Law of prediall Tithing is iterated, is vnderſtood by the *Iewiſh* Doctors of the fruits and increaſe, giuen vs out of the ſoile;

1 Polit. a. cap. 2.

and

and is well Paraphrased by the Septuagint when they turne it *in parabolis terrarum* that is, the increase of the earth. and in the vulgar it is expressed by fruges. But then, It is to se by what Law Curats of Churches in London can haue (so are the very syllables of that discourse) any luing of the people otherwise but like as the people by their own consents will giue them for ther Office doing. In very dedde they must haue leuyngs to kepe them out of necessite. and thereby it is to se how in London they cannot receiue ther leuyngs of Godd by no liuely gifts of grace, like as in the Countrey. But in London they must receiue their leuyngs of mens gifts; that is money which is euery mans own, for ther office doing. The Pope by his Law nor by his Bulls cannot compell no man to gisse his own gode to theym for theyr office doying more then people will consent to giff theym. for Christ saith that their leuing is freely giuen them of Godd, if they do ther office to see all peple worke. Therefore that if the peple haue not labors and leuings, they ought to haue none nor can make no Law whereby to axe no mans goode. Therefore that leuing which they haue had in London hath been by the consents of the peple which hath long time giuen them xiv<sup>d</sup>. of euery noble rated by the rents of houses which hath been riche leuyngs: wherewith they not content but ouer that hath procured of the peple money so many ways by casualties of Berjalls, Cryssmings, Weddings, Obits, and Offerings, ybe and secretly riselyb mens consciences taking priuy Tubes of what soeuer they can get, be it out of euil gotten goodes. howsoeuer  
they



they can get it, they call it *ther dewtie*. and thence he saies some Benefices were worth C<sup>li</sup>. some LXXX<sup>li</sup>. some C. marks, others L<sup>li</sup>. and then he shortly aduises how the Ministers maintenance should be otherwise there limited and leuied. But who sees not enough now that what is called *Tithes of houses in London*, is rather calld so only then is at all so? yet because the name of Tithes in those Acts of Parliament, is giuen to the Ministers maintenance there, it had been perhaps reputed negligence to haue omitted the remembrance of them, in the *course* of composing it. The Testimonies were chosen by weight, not by number. taken only thence whither the margin directs, neuer at second hand. Neither affected I to muster vp many petie and late names for prooffe of what is had wholly by all from ancient Fountains. The Fountains only and what best cleered them, satisfied me. and I supposd euery iudicious Reader would be so best satisfied also. For in meer matter of elder storie, what credit can *Nauclerus*, *Cario*, *Cussinian*, or the numerous rest of later time, adde to the testimonies of those Ancients yet extant, from whom they borrowed what euer they haue new drest of preceding ages? *Petrus Comestor*, or *Ludolphus de Saxonia* may aswell increase the credit of holy Writ, as those other may the truth of such Histories as instructed them in common with the rest of posteritie. Neither at all wish I that this of mine should gain any strength of Truth from my Name alone, but from those authorities which I haue de-



signed and brought, both for Elder, Late and Present times, out of such both Printed and Manuscript *Annalls, Histories, Councils, Chartularies, Laws, Lawiers, & Records* only as were to be vsd in the most accurat way of search that might furnish for the subiect. yet also I haue not neglected the able iudgements of such of the learned of later time, as giue light to former ages. but I so preferd the choicest and most able, that I haue wholly abstaind from any mention or vse here of those many Ignorants that (while they write) rather instruct vs in their own wants of abilitie, then direct to any thing that may satisfie. If through ignorance I haue omitted any thing in the *Historie* or the *Review*, that deserued place in them; who euer shall admonish me of it shall haue a most willing acknowledgment of his learning and courtesie. But all the bad Titles that are euer due to abuse of the holiest obtestation, be alwaies my companions, if I haue purposely omitted any good autoritie of ancient or late time, that I saw necessarie, or could think might giue further or other light to any Position or part of it! For I sought only Truth; and was neuer so farre engaged in this or aught els as to torture my brains or venture my credit to make or creat Premisses for a chosen Conclusion, that I rather would then could proue. My Premisses made what *Conclusions* or *Coniectures* I haue, and were not bred by them. And although Both of them here not a litle sometimes varie from what is vulgarly receiud; yet that happend not at all from  
any

any desire to differ from common Opinion, but from another course of disquisition then is commonly vsed; that is, by Examination of the truth of those Suppositions which patient Idlenesse too easily takes for cleer & granted. For the old Sceptiques that neuer would professe that they had found a Truth, shewd yet the best way to search for any, when they doubted aswell of what those of the Dogmaticall sects too credulously receiud for infallible Principles, as they did of the newst Conclusions. they were indeed questionlesse too nice, and deceiud themselues with the nimbleness of their own Sophismes that permitted no kind of established Truth. But plainly, he that auoids their disputing Lewitie, yet, being able, takes to himselfe their Libertie of Inquirie, is in the only way that in all kinds of studies leads and lies open euen to the Sanctuarie of Truth, while others, that are seruile to common Opinion and vulgar suppositions, can rarely hope to be admitted neerer then into the base court of her Temple which too speciously often counterfaits her inmost Sanctuarie. and to this purpose also is that of \* *Quintilian*, most worthy of memory, *Optim<sup>o</sup> est in discendo, patron<sup>o</sup> incredul<sup>o</sup>*.

\* *Iustit. Orator.*  
*lib. 12, cap. 2.*

For the Summe of the *Performance in behalfe of the Clergie*; I dare confidently affirme, that neuer before was there towards so much *Humane Law positive* for the paiment of whole Tithes, obserued to publique view as is here discovered; and that especially in the VIII. chapter for the Clergie of *England*. And plainly he

that talks of Tithes without reference to such *positive Law*, makes the object of his discourse rather what he would haue should be, then any thing that indeed is at all. For what State is in all Christendom wherein Tithes are paid *de facto*, otherwise then according to Human Law positive? that is, as subiect to some Customes, to Statuts, to all ciuill disposition. If they bee in truth due *Iure Diuino* (which Diuines must determine of) they remain equally so aswel after as before Human Laws made touching them. But that is a question dailly controuerted; and among the Clergie. Now, who euer disputes it and relies only on *Ius Diuinum*, or the holy Scripture for the right of Tithes, doth but make way for him whom hee cannot perswade that they are due by the Law of God, to thinke that they are no way due. Which questionesse was the originall cause of the Opinions of such as falsly taught them not at all payable, but arbitrarily as Almes euen since Parochial right in them established. I meane the *Dominican* and *Franciscan* Fryers, and those other of a farre different stampe, *Wicliffe*, *Erasmus*, and the like. Had they sufficiently thought of the Constitutions and Practise of Christian States, whereby Tithes had been variously dedicated for the maintenance of the Euangelicall Priesthood, and settled for other holy vses either by continuance of time, by the owners conueyance, or by any such other ciuill Title (the strength whereof is immediatly founded in human Law) what colour could they haue

haue had to thinke that they had been only Almes? for what euer is lawfully established by a ciuill Title, is cleerly *debitum Iustitie*, not *Charitatis*. what brain then except one bewitcht can think that Human positiue Law and common Practice which v-  
sually either declares or makes also a positiue Law, are not most carefully to be sought after in inquiries touching this sacred Reuenue, which is no otherwise enioyed in any State then as that Law hath ordaind and permits. And let *Human Laws, Practice, and Opinions* bee as their Autors will; yet whatsoeuer argument may be found in the law of God for the right of Tithes, remains still as vntoucht and equally of his former power, as the heat and light of heauen euer did, notwithstanding the vse of Fire had vpon earth. And the truth is that diuers of them that writ, with more will then iudgment, for Tithes, fall often from their *Ius Diuinum*, before they are aware, and talke of them as supposd due also by Human positiue Law of Practice. But they are farre enough from shewing what or where that Law or Practice is. what doe they else when they confound Tithes and consecrated lands together? and apply that to Tithes which is equally to bee spoken of lands giuen to the Church? I trust they mean not that the Church had an originall Title also *Iure Diuino*, to lands arbitrarily consecrated to it. Let not then either the purpose or conuenience of this Historie bee valued, from what distemperd Malice, Ignorance, or Iealouisie haue cryed it down with in corners.

The learned Frier *Bacons* most noble Studies being out of the rode of the lazie Clergie of his time, were vehemently at first suspected for such as might preiudice the Church. *Reuchlin* and *Bude*, the one for his *Ebrev*, the other for his *Greek*, were exceedingly hated because they learned and taught what the Friers and Monkes were meere strangers to. Others about their time had like fortune. Neither was any one thing in the beginning of the Reformation so vnwillingly receiud or more opposed by such as laboured that Ignorance might still continue in her triumph, then that singular light to the cleering of error, the Geek Text of the New Testament, first publiht in print by *Erasmus*. and it was ordaind (as he saies) vnder great penaltie in I know not what Colledge of *Cambridge*, that no Fellow of the house should be so impious as bring it within the gates. For the World hath neuer wanted store of such blockes laid in the way of Learning, as willingly endure not any part of curious diligence that seekes or teaches whatsoeuer is beyond their commonly receiud *Nihil vltra*. But there are others that both can iudge and doe with for all light to Truth. such they were that euen while *Ignorance* yet held her declining Empire, defended those Worthies, *Bacon*, *Bude*, *Reuchlin*, *Erasmus* and the rest that so suffred. and to doubt whether this of mine shall find such also, were but to question whether euery man were yet a malicious Rebell to Truth, and wholly without Ingenuity that performes euen as much in fostering her, as Time doth in breeding her. But

But neither is the Worke alone taxt by mistaking of the subiect, but also in regard of the Autor. what hath a *Common Lawyer* to do (so they murmur) with writing of Tithes. for by that name it pleases them to stile me, and I must confesse, I haue long laboured to make my selfe worthy of it. But I would their discretions also would designe out to whom it belongs more to write the *Historie of Tithes*, then to a *Common Lawyer*. I expect not such a sottishnesse, as that they should so much as dream it to bee more proper to any of the other single professions of this Kingdome; except to a *Diuine*, or a *Ciuilian*; vnder which name, because those which practise the Canon Laws here (according as the Common Laws permit) take their Degrees, in the Ciuill Law, I comprehend also the Canonist. and vse hath here made the name of *Ciuill Law*, to denote a both *Ciull* and *Canon*. For the *Diuine*; what is there in the course of his Study restraind to his profession, that can neer enough instruct him in the *Laws* and *Practice*, especially of the *Christian* times. Nor is the *Practice* or *Laws* of Tithes among the *Iews*, as they are deliuerd & interpreted by their Doctors, more indeed restraind to the course of *Diuinitie*, then of *Law* and *Historie*. But should a *Ciuilian* rather haue dealt with it? if hee; then eyther (according to what we vnderstand by that name in *England*) as a *Ciuilian*, or as a *Canonist*, if as a *Ciuilian*; hee should then haue made that proper to himselfe touching which, in the whole body of his Law (though

a *Alberic. Gentili*  
de iust. lib. 2. c. 1.  
de iust. lib. 2. c. 1.  
de iust. lib. 2. c. 1.

(though hee take in also *Theodosius* his Code, the *Basilica* and the *Novels* of the later Easterne Emperors) not the least mention is found of Tithes belonging to the Church. Indeed, a case is put by *Vlpian* of <sup>b</sup> vowing of Tithes, which some old ignorant and barbarous Doctors vnderstand of Tithes among Christians. but they were long since laught at for it by him that <sup>c</sup> first happily labourd in the restoring to that Profession, the lost neatnesse and elegancie of the Text. That was cleerly spoken of the Roman vse only, & of vowing to *Hercules* or the like. But should the *Ciivilian* as a *Canonist* haue done it? what in all his *Decrees*, *Decretals*, and *Extravagants*, though hee ioyned many armies of his Doctors, directs him to the *Practice* of the *Jews*, *Gentiles* or *Christians*? where shall the *Canonist* or the *Ciivilian*, or the *Diuine*, in the courses of their proper studie, find the many *Secular Laws* made in behalfe of the Clergie for Tithes? where the ancient practice of payment? If it be cleer then (as I hope none hath the impudence to denie it) that neither the *Diuine*, nor *Ciivilian*, nor *Canonist*, by the course of their owne appropriated Studies, can come to what is necessary in the knowledge of the *History of Tithes*, it will bee as cleere that none of them could challenge the meddling with it as a right specially belonging to any of their Professions. But neither indeed is it proper to any one alone of those that are commonly made Professions. The truth is, both it and not a few other enquiries of subjects

<sup>b</sup> L. 2. Si quis ff. de  
policariis.

<sup>c</sup> Butavius ibid. et  
alii, quicunque ff.  
de l. Honor. actione.



too much vnknowne, fall only vnder a farre more  
 generall Study; that is, of true *Philologie* the only  
 fit Wife that could be found for the most learned  
 of the Gods. Shee being well attended in her  
*ἱερὰ καὶ διαρκήματα* or daily seruices of Inquiry, by  
 her two Hand-maids *Curious Diligence* and  
*Watchfull Industrie*, discouers to vs often from her  
 raised Towre of Iudgment, many hidden Truths,  
 that, on the deuell of any one restrained Profession,  
 can neuer be discerned. and euery Profession takes  
 from her to it selfe (as was long since <sup>d</sup> obserud)  
 some necessary part not elsewhere to be sought for.  
 not much otherwise then as the Subaltern sciences  
 do from their Superiors, or as they all do from  
 that *Vniuersalitie* or *First Philosophie*, which is but  
 the more reall part of true *Philologie*, and esta-  
 blishes principles to euery Facultie that could not  
 of it selfe alone know how to get them. But is not  
 the companie of this great Lady of Learning with  
 her attendants, as fit for a Student of the *Common  
 Laws of England*, as for any other pretending  
 what facultie soeuer? I neuer heard that shee was  
 engaged alone to any beside *Mercurie*. Nor find I  
 any conditions in the Mariage twixt her and *Mer-  
 curie*, that shee should fauour any one particular  
 Profession more then another. I know there haue  
 been and are many common Lawiers of other  
 States (for euery State in Christendom is gouer-  
 ned by its own *Common Laws* and *Customs*, and  
 hath truly its *common Lawiers* as is further shewd  
 towards the end of the *Review*) so farre from be-

d Apud Mars, Ca-  
 pillam lib. 2. de  
 Nuptiis Philologiae  
 & Mercurii. & de  
 Philologiae aliquot  
 veris consulas.  
 Quæstiones Instit.  
 Orator. lib. 12.  
 cap. vii.



ing strangers to Her that they are all to be reputed of her chiefeſt Darlings; and ſome of them are hardly equalled among any other Profeſſors. witneſſe in *France* thoſe euer honord names, *Bude, Cuiacius, Briſſon, Tiraquell, Pitbou, Paſquier, Le Thou, Ærault, Berterie, Sauaron*, and others; in the Empire, *Gruter, Freber, Ritterbuſe*; in the v-nited Prouinces, *Groot, Heuter*, and the like elſewhere. For theſe all were or are practicers of the various *common* or *ſecular Laws* of their own Nations, although they ſtudied the *Imperialls* and *Canons* in the Vniuerſitie. and who of the learned knows not what light theſe haue giuen out of their ſtudies of *Philologie*, both to their own and other Profeſſions? and that in rectifying of *Storie*, in explication of good Autors, in vindicating from the iniurie of time both what belongs aſwell to ſacred as prophane ſtudies? why then may not equally a *common Lawier* of *England* uſe this *Philologie*? and by conſequent be a fit Autor of this *Hiſtorie of Tubes*, as of a proper iſſue of *Philologie*? it being indeed much more proper alſo. to *Philologie* in a *common Lawier*, then in one of any other Profeſſion. For the two chief parts of it (that is, *Practiſe* of payment and the *Laws* of Tithing, that either are in force or euer were receiud touching them in any State) were alwaies and are part of the proper Obiect of his Studies. and what euer *Diuines* or *Canonists* conclude of them; it is the *Secular* or *Common Laws* only that according to Cuſtoms, and various Ordinances permit or reſtraine the

the Canons in legall exaction of them, and that in other States aswell as in *England*. for howsoever it be affirmed by <sup>e</sup> some which enough accurately think not of it, that the Clergie euery where in the Western Church, being scarce a hundreth part of the People, are inricht with whole Tithes of Fruits of the Earth and of Cattell; yet it is certain that in no State of that Church, whole Tithes are vniuersally paid. But frequently Customs, not only of a *Modus* but *de non decimando* are by force of secular Law practised. witnesse for the Empire, is in that Dict of <sup>f</sup> *Norimberg* vnder *Charles* the fift, where the lay Princes of the Empire complaine against the Church for offering to put their Canons for Tithes in practice; *Etsi Laici per multa annorum curricula de certis eorum prædijs, neque maiores neq; exiguas, ut vocant, præstiterint Decimas &c.* As much for *Spain* is in <sup>g</sup> *Gouaruias*; for *Italie*, bin *Vgolin*, *Caietan*, others; for *France*, in *Papon* on the customs of *Burbon*, *Boerius* on those of *Berry*, *de Grassalio*, beside the many Arrests of Parliament that are adiudged against the Canons. But these things are more particularly shewd in the Seuenth Chapter, wherein (as in the rest) we haue affected rather what is Autoritie enough, then what is varrious. Who now can shew colour why this was not a worke proper enough for a Common Lawier? But this whole Premonition, I thinke, is as well more then is necessarie to the truly iudicious, as it may perhaps seem lesse then what satisfies to the numerous Pretenders, that neither know any way

*e. Bodin. de Repub.  
lib. 5. cap. 2.*

*f. Camis. Norim-  
berg. 1532. Gram-  
m. 45.*

*g. Variar. Resolus.  
lib. 1. Cap. 17. &  
Præf. quæst. 35.  
h. De officio & po-  
testate Episcopi  
part. 1. cap. 9.  
i. Ad 2. 2. D. 76.  
9. 27.*

XXII

that lies out of their beaten Rode, nor value books  
but as Stationers do, nor admit willingly of any  
other kind of Studies then such as are more like  
fordid Occupations then Liberall Professions. But  
I stay you too long here, Reader. Trie now how  
I have performd my promise; spare not to trie  
with your most censorious examination;

— — — — — *sed magis acri*  
*Iudicio perpende; & si tibi Vera videtur,*  
*Dede manus; aut, si Falsa est, accingere contra.*

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*Between about the yeer D. CCC.  
and neere M. CC.*

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[illegible]

The  
Historie  
of TITHES.

Of them before the Law.

C A P. I.

- I. Melkizedek had Tithes only of the spoiles of Warre giuen him by Abraham. *Aeghina* denotes spoiles of Warre, and perhaps also profits taken from the ground, or Ruta caesa.
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- III. Whether any certaine Quantitie were obserued in the Offerings of Cain and Abel.
- IV. A Cabalisticque operation in numbers, by which Tithes and the first Fruits, offered by Abel, might haue a mysticall identitie. Such operations were amongst old Christians also, but meerly vaine.

I. **A** Brabam, in his return from redeeming his nephew Lot with his substance, and all the substance of Sodom and Gomorrah, was blessed by Melkizedek King of Salem and Priest of the most high God; and gaue him Tithes of all. So is the holy Writ. But what that all was, is not cleerly agreed vpon. it is taken to be מכל אשר לו *muccol aghsher lo*, that is, of all that he had, as the ordinarie Glosse of Salomon Iarchi there interprets. and expressly



\* Epist. ad Heb. 7. 2

\* Archæolog. &  
cap. 12.

ב ורשימה

ע ארלכא  
 Eleosyga n.  
 ככא sapia  
 dinat in Alcora-  
 no, quod monuit vir  
 sam humanitate  
 quito doctina sin-  
 gulari Guil. Red-  
 wellus linguarum  
 imprimis Orientali-  
 um callentissimus.  
 Vide Azor, 22.  
 34. & 92.

pressly so are the Syriaque and Arabique translations of the new \* Testament, where this is spoken of. But it is hard to conceiue it of any other *all that he had*, than *all the substance*, or *all the st oiles* that he had by that expedition. The holy Context so points it out. So did the old Iews vnderstand it. otherwise neuer had so great and worthy an Autor, \* *Flavius Iosephus* a Iew, confidently written the Tithe there giuen to be *ἀνάτλις τῆς λείας*, the *Tithe of what was gotten by the Warre*. He knew a receiued opinion in his Nation, to be so, or else had not been so forward to deliuer it. The same is confirmed by the *Targum*, attributed to *Jonathan Ben-Vziel*. there, of *all*, is interpreted by *מכל מה באררוב* *miccal mah datbeib*, that is, of *all that he brought back*. And, to free it from doubt, the holy Autor of the Epistle to the Ebrews, first v-  
 sing the Text of *Genesis* in those words, *ἀνάτλις παν-  
 των*, the *Tithe of all*, after a few words interposed, ex-  
 plains it by *ἀνάτλις ἐν ᾧ ἀποδομιον*, the *tithe of the st oiles*;  
 as if he had said *ἀνάτλις ἐν ᾧ πάντων ἀποδομιον*, the *Tithe  
 of all the st oiles*. In that place, the Syriaque hath  
*Tithe<sup>b</sup> and first fruits*, and the Arabique, *Tithe<sup>c</sup> and  
 Almes*. indeed *ἀναδμία* signifieth also *first fruits*, or  
 the *chiefest parts*, sacred to the gods among the  
 Gentiles; and ἐν ᾧ ἀποδομιον hath, in that sense, been  
 turnd there, by *de præcipuis*, in the vulgar. But those  
 Eastern translations suppose, it seemes, as if the  
 Greek should be *ἀνάτλις καὶ ἀποδομιον*. But we must not  
 take the old text to haue been so different from what  
 we now read. And for that, *de Præcipuis*, in the vul-  
 gar; can it be thought that he gaue Tithe of the best  
 parts

parts only? How stands that with giuing Tithe of all? It must therefore be interpreted of the *spoiles*. So *St. Chrysostome*<sup>d</sup> vnderstands the Text. *ἀρεθίσια*, saies he, τὰ λάφυρα λέγεται, that is, the *spoiles* are called *ἀρεθίσια*, whereof, as he notes also, *Abraham* made *Melkizedek* a partaker, by so giuing him the first fruits of his martiall performance. Accordingly doth *Sulpitius*<sup>e</sup> *Seuerus*, in his storie of *Abraham*, call his tenth *decimam prædæ*, which is also expressly iustified by *S. Hierome*, often stiling it *decimas solorum, prædæ & victoriæ*; who well withall confesses, that, were it not for the holy exposition in that Epistle to the *Ebrews*, the relation in *Genesis* might aswell be vnderstood, that, on the other side, *Melkizedek*, as a bounteous Ancestor, had giuen to *Abraham* the tenth part of his estate; the Text indeed being both in the *Ebrev* and *Septuagints* so, that, no name immediately preceding the mention of the gift, it sufficiently thence appears not, who was the giuer. *Vtrunque* (saies<sup>f</sup> *S. Hierome*) *intelligi potest & iuxta Ebraicum, & iuxta Septuaginta interpretes, quod & ipse acceperit decimas solorum, & Abrahæ dederit decimas substantiæ suæ; quanquam Apostolus in Epistola sua ad Ebræos apertissimè definiat, non Abraham suscepisse à Melchisedek decimas diuitiarum eius, sed de solorum hostium partem accepisse Pontificem*. Neither is this interpretation of *ἀρεθίσια* dissonant from ancient vse among the Greeks. Indeed it elsewhere rarely occurs in this sense; but cleerly in that old proverb, *ἀρεθίσια Πυγμαῖα Κολοσσῷ ἐπαμβύεν*, To put an armor taken from a *Pygmie*, on a *Colossus* his back, it de-

d In Epist. ad Ebræos, c. 14. v. 16.

e Hieron. l. 1.

f In Epist. ad Ebræos, c. 14. v. 16.

g Phil. Erat. in vit.  
Scribit in Nicet.  
Vnde emendes o-  
porteret depraua-  
tos Suida Codices  
in ἀκροβύτια.

h Adrian. ff. de a-  
ctionib. empt. &  
vendit. l. 17. §. 6.

i Vm Glossa  
verb. l. i. in  
fūta.

j Glo. Ter. vult.  
Gracolat. edit. ab  
H. Stephano.

notes nothing else but σπύλα, s or λείρες, that is, *spoiles taken from dead or living*, according whereto both *Hesychius* and *Suidas* haue expounded it. From which sense, I ghesse, it hath also been brought to signifie those kind of profits, taken (as spoiles) from the Land, which the Ciuilians call *Ruta cesa*, that is, <sup>h</sup> trees cut down, coles, sand, or chalk digged vp, or the like, which we stile things *seuered from the free-bold*, and turnd into chattels, according as the Greek Lawyers <sup>i</sup> named them τὰ ἐκ τῆς λαμβανόμενα, *Things that were taken from the ground, or free-bold.* for so it agrees with our phrase. That, which first bred me this coniecture, was a corrupted place in an old <sup>k</sup> Glossarie, where ἀκροβύτια is interpreted by *Ruticilia*. what can *Ruticilia* there signifie? I conceiud it to be depraud for *Ruta cesa*, which is often read as one word. and no man can denie but that *Ruta cesa* may easily be stiled *spolia* or *exumia villa*, and by an easie metaphore be expressed in a word that signifies spoiles of warre. many corruptions much further off from the true originals, are obuious in the same Glossarie.

II. The next passage of Tithes is in *Iacobs* vow. *This* stone, saith <sup>l</sup> he, *which I haue set vp as a pillar, shall be Gods house. and all that thou shalt giue me, I will Tithe and giue the Tenth to thee.* which (*Iosephus* saies) vpon his return, being after XX. yeers, he <sup>m</sup> performed, offering the Tithe of all his substance, or ἀκρίτω περιεσπέναν, *the Tithe of all he had gotten.* Into whose hands he gaue his Tithes, appears not. But the chiefest Priest of that time was his

l Gen. 28. 22.

m Ios. Antiquolog.  
u. c. 19.

Chap. 1.

his father *Isaac*. For before *Aaron*, the Jews say, the Priesthood was wholly annext to the first born of families. Which <sup>n</sup> agrees well with the sanctifying of the first born, commanded in *Ægypt*. Hence it comes that *Melkizedek* is commonly reputed to be *Sem*, the eldest sonne of *Noah* (for so in this declaration he may be cleerly admitted; although no small controuersie be whether he or *Iapheth* were the eldest) and *Noah*, *Abraham*, and *Iob* and the like are accounted, <sup>o</sup> by this right, Priests of that time. and as *Abraham*, being in a right line X. degrees from *Sem*, gaue tithes to him being the eldest Ancestor of the house, or first-born, and so a Priest in *Salem*; so it may be thought, that *Iacob* paid his vow into the hands of *Isaac* the chief of the family then liuing as a first-born, and a Priest also. But remember withall, that *Iacob*, although the yonger Sonne, is reputed also to haue had this Priesthood by the sale made to him of his elder brother *Esau*'s birth-right, to which a Priesthood was incident. So was the ancient opinion of the Jews, as Saint *Hierome* <sup>p</sup> relates it. *Simul & hoc tradunt, sayes he, quod vsq; ad sacerdotium Aaron omnes primogeniti, ex stirpe Noe, fuerint sacerdotes & Deo victimas immolârint, & hac esse primogenita quæ Esau fratri suo vendiderit Iacob.* And expresse mention is of his exercising this holy function in 9 sacrifices, during his fathers life. For, hauing gotten the right of primogeniture, and being long seuered from his fathers house, and hauing a distinct family and posteritie in his own power, notwithstanding his father were then liuing, yet had he that kind

<sup>n</sup> Exod. 13. 2.

<sup>o</sup> Origin, lib. 1.  
in Iob.

<sup>p</sup> In Epist. ad  
Euzarium.

<sup>q</sup> Gen. 31. 54.

of Priesthood in him. For if this holy right came not to any till he had been the eldest of the family as well as the first born, how could *Abraham* be accounted for a Priest? as expressly *Origen* and others reckon him; which the forme of his offering his sonne *Isaac* also iustifies. He was neuer both first-born and eldest of his family. For *Sem* liued after him about XL. yeers, and kept that title from him; but a first-born he was, and deuided also from his fathers household at the time of his tithes giuen him. whence obserue by the way that both *Abraham* and *Iacob*, according to this right of that time, must be Priests also, when they paid these tithes. No other expresse mention is of tithes before *Moses* his time; vnlesse, with the Iews, you dream, that the Leuiticall Law was written before the Creation.

III. Yet the ancients seeme to haue obserued a respect had to the quantity of what was, as a part of the yeerly increase, consecrated in those times to the Lord; and that euen in the first memorie of sacrifice.

<sup>a</sup> Tertull. lib. aduersus Iudeos, alij item sapius.

*Cain's* offering was not regarded, they <sup>a</sup> say, because, *quod offerebat non recte diuidebat*, hee did not well deuide what he offerd: which seemes to designe out a defect in the quantity; as if specially some *quota pars* were at that time required. But this reason was from no other cause then the mistranslation of the text in the Story of *Cain*. For, where the <sup>b</sup> original is thus, *Why is thy Countenance cast downe? if thou doe well, is there not remission? if thou doe ill, sinne lyeth at the door;* they read it farre otherwise, and thus; *quoniam, nonne, si recte quidem offeras, non re-*

*cte*

<sup>b</sup> Gen. 4.7.

*Ete autem diuidas, peccasti? quiesce*: which is all one with the Septuagints text, that in the Primitiue times was chiefly in vse, *יָדָהּ יָפְדָּהּ*, say they there, *אָמַרְתָּ אֵלֶיךָ, יָפְדָּהּ אֵי מַד בִּיחַנֶּה הַמִּשְׁפָּטִים; הִנֵּה אָמַרְתָּ*. If thou offer well, but deuidest not well, hast thou not sinned? bee quiet. And this passage of *well deuiding*, did *Iulian*, that witty *Apostata*, take, for a speciall question to oppose a Bishop in his time. But most agreeable to that translation, and not dissonant from the originall, is, that hee gaue with a gruding minde, and not of the best and first of his fruit, as hee ought to haue done, and as the Heathen euer did, or by their Pontificiall Lawes ought to haue done in their *Præmesum*, that is, the first fruits of their Corne, or their *Calpar* or *vinum inferium*, which was the richest of their wine. And it is expressly said, that *Abel* brought of his first fruits, but *Cain* only of his fruit of the ground; the one giuing the Lord a portion of the best, the other not regarding of what time, what worth it were, so it were of his fruit. So, here is not any *quota pars*, or certain quantitie noted, but *אֵי מַד בִּיחַנֶּה הַמִּשְׁפָּטִים*, or the mind only of him that offered, and the qualitie of the oblation.

IV. Yet to, if some Cabalisticque and doting curiosities were of value, there might be some identitie, or at leſt some affinitie between the first fruits of *Abel*, and the tenth part. The first fruits are in the text called *בְּכֹרֹת* *becoroth*, the tithe *מַעֲשֵׂה* *maighsher*. Now the Iews make great and hidden correspondencies twixt things denoted by any two words, whose seuerall numbers made out of their letters,

c *Cyroll aduers.*  
*Iulian, lib. 10.*

d Ita *D. Chrysost.*  
in *Genesi. xxy. 11.*  
*D. Ambrosii, lib. 1.*  
de *Cain & Abel.*  
cap. 7. & *lib. 3. c. 6.*  
v. de *Epistol. ad Hebræos, cap. 11. q.*

are

e Archangel. in  
Dogmat. Cabalistic  
c. 19.

are equall; their letters, as the *Greeke*, being all numerall. and two kinds of this *Arithmetique* they haue: the one in greater numbers, which is frequent with them; the other in lesse. their practice \* in the second kind is thus: Out of euery Centenarie and Decad of the letters of a word they take a vnitie, and adde these to the rest, that is, the lesse numbers; by which operation, if two words agree in summe, they thinke forsooth some great mysterie, of mutuall relation, twixt the things signified, is discovered. Those two of the *first fruits*, and *tubes*, by this way, are equall. For example. Dispose the letters and their numbers thus.

ב ר ר ב ר

400. 6. 100. 10. 1.

ר ט ע ב

100. 300. 70. 40.

in the first, out of 400. 200. and 20. take 4. 2. and 2. that is a vnitie out of euery Centenarie and Decad; and the summe is 8. which, added to the lesse numbers, make 16. Likewise in the second, out of 200. 300. 70. and 40. take 2. 3. 7. and 4. (there being no lesse numbers) and you haue the same summe as in the other, that is 16. But take this only as a tast of such impious libertie as these kind of vanities giue (mongst the Iews) to make any thing haue mysticall reference to euery thing. Yet neither were Christians without the very like in the primitiue times. Witnes the *Marcofian* and *Colabarsian* heresies in their α. and ω. made the same with αωεζθ, and diuers other



other like by agreement in number. They indeed went so farre in this ridiculous kind, that they determined <sup>f</sup> *totam plenitudinem & perfectionem veritatis in istis literis (numeralibus) esse dispositam.* witnes the *Basilidians* god, *Abraaxas*. Nay some Fathers of those times so much regarded this arithmetick way of search, that in this very storie of *Abrahams* successe with his companie of 318. and of his recouering the *goods*, the *women* and *people*, they deliuer that the mysterie of our Lord crucified, was denoted. that number 318. is in Greek thus, *πν*. For they reckond out of Greek, as the Iews out of Ebrew. in the 300. figured by *π*. they supposed the Crosse foretold; as otherwise it is vsually obserud vpon that of *Ezechiel*, cap. I X. 4. And *π*. they took for the two first letters of our Sauours name *Ιησους* or *Iesus*. Whereupon *Prudentius* <sup>h</sup> relating the victorie, saies, we should be very rich, as *Abraham* in his spoiles,

<sup>f</sup> *Tertull. lib. de Harf. id genus plurima habet apud Epiphanium, Tom. 3. lib. 1. cap. 1. & Irenaeum lib. 1. cap. 10.*

<sup>g</sup> *Clem. Alex. Stromat. 5.*

<sup>h</sup> *De Prae. ad Jux. quaxian.*

*Si quid trecenti, bis nouenis additis,  
Possint, figurâ nouerimus mysticâ.*

where, for *bis*, some Copies, without sense, haue *bis*. but who sees not the vanitie of such mysteries? Although too, the vnlimited libertie of our times, in so confidently daring to tell vs the mysterie of the number of the <sup>i</sup> *Beast*, would make a man giue the more regard to these collections out of numbers. Every great Clerk, that deales with it, hath, for the most part, his seuerall word to make vp 666. Some for vs; some against vs. And no doubt is (that one old one may be added) but he, which, long before *Lu-*

<sup>i</sup> *Apoc. cap. 13. 18.*



*iber*, made Sir *Iohn Old-Castles* name to fulfill that prophesie, thought he had been as neer truth as the best of them. Out of *IOHN O L D-CASTEL* in numerals <sup>k</sup> he makes 701. and thence subtraicts the yeer of his age, wherein he so charitably and stoutly tooke part with *Lollards*, and was condemnd for heresie, that is, 35. and the rest being 666. notes him out (saies he) with the Character of the Beast. *risum teneatis?* this in most miserable verse he expresses. Nor hath this dream of his, place here otherwise than as an old patterne of trifling boldnes, vsed in the later Arithmetique of many on that passage in *S. Iohn*: in whom are <sup>l</sup> *tot Sacramenta, quot verba*; and of whom the answer giuen by that great Doctor, *Caluin*, was as iudicious as modest. he, being demanded his opinion, what he thought of the Reuelation, <sup>m</sup> answerd ingenuously, *he knew not at all what so obscure a Writer meant*. he might best haue spoken it on this particular of the number; to which, found by arbitrarie collection, who euer giues much credit, might vnfortunately perchance be induced to beleue some mutuall respect twixt *Abels*. Offering, and *Abrahams* Tithes.

<sup>k</sup> *Thomas Elmham*  
Prior Lenton in  
*Chron. Hen. 5.* in  
Biblioth. Bouleia-  
na

<sup>l</sup> *Hieron. Epist. ad*  
*Paulinum*,

<sup>m</sup> *Bolin. Method.*  
*hist. cap. 7.*

How, among the Jews, *Tubes* were paid  
or thought due.

## C A P. I I.

I. First fruits, and Heave offerings (*that is*, sixtieth parts at least) first were paid out of the fruits of the earth.

II. The

- I. *The first Tithe was paid to the Levites (who out of that paid a Tithe to the Priests) and then the second Tithe.*
- II. *The error of them that make a third Tithe. The second Tithe of every third year sent on the poore. what they take the year of Tithing to signify in Deuteronomie.*
- III. *Above a sixth part was yearly paid by the husbandman: but no Tithe by him to the Priests.*
- IV. *How their Cattell were tithed.*
- V. *A discontinuance of payment among them. Honest Over-seers chosen for the true payment. Demai, that is, things doubtfull, whether Tithes were paid of them or no. Passages in Epiphanius and S. Chrysostome, of their Tithing.*
- VI. *Their Tithing of every herb. what their Canonists hold Titheable.*
- VII. *Their Law of Tithing (after the destruction of their second Temple) ceased, by the doctrine of their Canonists. which teaches also that they are not to pay elsewhere then in the Land of Israel, and some adiacent Countries. Presbyteratus Iudæorum totius Angliæ anciētly granted by the English Kings.*

I. **T**He yearly increase being either fruits of the ground or Castell; In the Law, of fruits of the ground, first, the first of the forwardest

n Exod. 23. 10.  
Levit. 23. 10.  
Num. 15. 20.  
o In Talmud in  
Seder Zeraim,  
Mascheth Baccarim,  
inque inde recentiores eorum  
inrisperini,

n were offered to the Priest in eares of Wheat and Barley, Figs, Grapes, Oliues, Pomegranats and Dates. And, of these seven only, the first fruits o were

p Dnu. 18. 4.

q Salomon Iarchi  
ad id. 3. locum, ex-  
cit. Iulisp. & D.  
Hieronymus ad E-  
zech. cap. 45 & Euf-  
sianus collat. 31.  
cap. 3.

r Hanc loquendi  
formulam habes  
apud D. Mattha-  
eum, cap. 10. 15.

s Ezech. cap. 45. 13.  
& 11.

paid in what quantitie the owner would. next, the *Therumah* or *beaue Offering*, or *first Fruits of Corne, Wine, Oile, Fleece*, and the like, were also <sup>r</sup> given to the Priests. But it being not determined by *Moses* of what quantitie this *beaue Offering* should be; the Jews anciently assest it to be enough at the <sup>q</sup> *fiftieth part*; but so, that no necessitie was that euery one should pay so much. he that paid a *sixtieth part* was discharged; and many of the better deuotion offerd a *fortieth*. The *fiftieth part* they call *תרומה כניניה*, that is, an *indifferent* or *competent Therumah*, or *beaue offering*, which they namd also *תרומה גרובה*, that is, the *great beaue Offering*. the *fortieth* they stile *תרומה עין יפה*, that is, a *Therumah of a faire eye*, or liberally giuen; & the *sixtieth* *תרומה עין רעה*, that is, a *Therumah of an* <sup>r</sup> *ill eye*, or a niggards gift. But you may obserue too, that this, which they called a niggards gift, was not beneath the quantitie of the *Therumah* appointed in <sup>s</sup> *Ezekiel*, where the words are; *This is the Therumah that yee shall offer; the sixt part of an Ephah of an Homer of wheat, and yee shall giue the sixt part of an Ephah of an Homer of Barly.* it is the same as if he had said, *ye shall offer a Therumah of the sixtieth part of euery Homer.* for an Ephah (being the same measure with a Bath; that is, neer our common Bushell) was the tenth part of an Homer; therefore the sixt part of an Ephah, the sixtieth of an Homer. After the *Therumabs* offerd to the Priests (euery kind being giuen in season) out of the rest were taken the *Tithes*. which are best diuided into the *first* and *second Tithe*.

II. The

II. The *first Tute* was <sup>e</sup> paid, out of the remainder, to the Leuites at *Ierusalem*. by that name it is euery where <sup>u</sup> titled. and, out of this *Tenth* receiued by the Leuites, another *Tenth* they <sup>x</sup> paid to the Priests, as a heaue Offering out of their Tenth, which they called also the *Tute of the Tute*. For the Priests receiued no Tithes of the Husbandmen: on-ly the Leuites receiued Tenths from them, and paid their Tenth to the Priests; being (as <sup>y</sup> S. Hierome sayes) *tanto illis minores, quanto ipsi maiores populo*. So Clergie men, by that example, haue paid Tithes to the Pope; and so by a <sup>z</sup> late Law they doe in this Kingdome to the Crown. Neither might the Leuits spend, to their owne vse, any part of theirs, till this *Tenth of the Tenth* were paid. Afterwards it might be imployed for their maintenance generally where-soeuer. This *first Tenth* paid; the nine parts remain- ing, were <sup>a</sup> accounted *פריש*, that is, *prophane*, or for common vse; yet not to be spent by the Possessor, till he had taken out of those nine <sup>b</sup> another *Tithe*, which he was, the first two year, to carie to *Ierusalem* in kind, or if the way were too farre, to turne it into money (adding a fift <sup>c</sup> part of the value: for to this Tithe do the Iews apply that of *Leuit. XXVII. 30,* and *31.*) and spend it there at the Temple in Feasts, which were neer like to the old Christians *Agape* or *Loue-dayes*. and euery third-yeer the same he was to spend vpon the poore and Leuits within his owne gates. After those Tenths thus disposed of, the rem- nant of that yeers increase they calld *תרומת תרומה*, that is, as if you should say, *euery way prepared* or

<sup>r</sup> Num. 18. 24.

<sup>u</sup> *Iudai possim, & Joseph. Arch. lib. 4. cap. 7. Tobit. cap. 1. comm. 7.*

<sup>x</sup> Num. 18. 28.

<sup>y</sup> *Epist. ad Fabia- lam, de veste Sa- cerdotali.*

<sup>z</sup> *Stat. 26. Hen. 8. cap. 3.*

<sup>a</sup> *Ben-Maimon in- tad Chayeha, part. 3. maff. de Deci- mu c. 8.*

<sup>b</sup> *Deut. 14. 23.*

<sup>c</sup> *Ierohi ad eund. locum.*

fit for common vse, or absolutely Lay Chattels; the first nine parts being so only respectiue. This other Tithe they stiled their *second Tibe*, or Tithe for Feasts, that is, <sup>d</sup> *שמיני עשר ד'אוריג'.*

<sup>d</sup> Josephus lib. 4.  
Arch. cap. 7.  
<sup>e</sup> Tobit. 7.

III. Some make a *third Tibe*; as <sup>e</sup> *Tobit*; expressly vsing the name of *שמיני עשר*, a *third Tibe*. <sup>g</sup> *וְלֹא עֵרְלֹו* (sayes he) *וְשִׁמְשֻׁוּ אֵלַי וְאֶחָדָם*, And the *third Tibe* I haue giuen to whom it was meet. But he means only the *Tibe of the third year*, that is, the Tithe which euery third yeer (after the *first Tibe* paid) was to be laid vp by the husbandman in his owne gates for the *Leuite that is within his gates, the stranger, the fatherlesse, and the widdow*. Which <sup>f</sup> *Iosephus* also names *עֵרְלֹו* <sup>h</sup> *וְלֹא עֵרְלֹו*, a *third Tibe to be bestowed euery third year*. and this the Rabbins call *עני עני*, that is, the *poore mans Tibe*. And it is also titled a *third*; but falls better vnder the *second* of our Diuision, and need not to made a *third*, nor is it. Nor, by the great <sup>i</sup> *Scaligers* leaue, can it be accounted the *first*, nor doth it at all answer to that. For the first Tithe was paid euery yeere, sauing the Sabbaticall. otherwise, whence should the Leuits and Priests haue their liuelode of that yeer? and so expressly affirme the great <sup>k</sup> *Doctors of the Iews*; and that according to their Talmud or Canon Law; that the *first yeer* first they paid the *first Tibe*, then the *second*, so in the *second yeer*; and that, in the *third yeer*, after the first Tithe paid, they paid the *עני עני*, that is, the *poor mans Tibe*. and that yeer *עני עני*, that is, the *second ceased*, or was not paid. <sup>i</sup> *Ben Maimons* words are, that in the *third* and *sixt yeers* the

<sup>f</sup> Archaeol. 4. c. 7.

<sup>g</sup> *Etiarist*, de decimis Iudeorum.

<sup>h</sup> *Mos. Mikot*; in *Musquoth*. c. 135.  
*Ben Kasun*, p. 42.  
473. alij.

<sup>i</sup> In *Mishnah Torah* part. 3. de dei no secunda, cap. 1.

the poore mans Tithe was *תִּתֵּי מַעֲשֵׂי שָׁנָה*, that is, in  
*stead of the second Tube*. Neither can that in *Tobit*,  
 touching the payment of the second Tithe *euerie*  
*yeer* (wherein both the *Greek* and *Ebrev* of him a-  
 gree, although in other things they much differ) be  
 otherwise well vnderstood, then for *euery of the two*  
*yeers*, vnlesse that text be wholly contrarie to the  
 known practice of the Iews Canons. So then euerie  
 third yeer the Leuits at the Temple mist their second  
 Tithe for their Feasts and Loue-dayes; the same be-  
 ing charitably, and by diuine Ordinance, spent at  
 home in the gates of the husbandman. Neither doth  
 the *second* and this *poore mans Tube* differ in sub-  
 stance, but only in circumstance. The diuision of  
 both, is exactly the same, and the persons appointed  
 for the eating, are vpon the matter so to. For as the  
 Leuits, ministring in their course at the Temple,  
 were to haue part in the Feasts made of the second,  
 so were the Leuits and the poore in the countrey en-  
 tertained with this of the third yeere. The place,  
 where the bestowing was, makes their difference; sub-  
 stantially they are the same, and fitly goe vnder one  
 name. which is fully to me confirmed by the *Septua-*  
*gints* translation of that place in *Deuteronomy*, which  
 we <sup>k</sup> read according to the *Ebrev* thus: *When thou*

k Deut. 16. 12.

*hast made an end of Tithing, all the Tithe of thine en-*  
*crease in the third yeer (which is the yeer of Tithing)*  
*thou shalt giue to the Leuits, strangers, fatherlesse, and*  
*the widow, that they may eat within thy gates, and be*  
*filled.* They there translate it. *Ἐὰν ὁ συντελέσας ἔτος ἀγροῦ*  
*παῦλις ἐθελήσῃσιν αὐτῷ παραμύειν τῆς γῆς οὗ ἐν τῷ ἔτει τῷ τρίτῳ τὸ δέουσι*

ἐν τῇ τρίτῃ ἑβδόμῃ τοῦ ἔτους ἢ τοῦ πεντακостаίου : and that is, *When thou hast ended the Tubing of all the fruits of thy ground, in the third year ; the second Tube thou shalt giue to the Leuit and the stranger &c.* as in the common text. Where plainly, you see, the poore man's Tithe is expressly called the second Tithe, which iustifics our Diuision. Doubtlesse, they there in stead of שנת חמשה שנה *shenath hamaigshber*, that is, *the year of Tubing* (as the text is) found in their Ebrew Copies, שנה חמשה שנה *shenith hamaigshber*, which they took for the *second Tube*, knowing that in truth that place meant no other. Diuers passages in their translations are vpon such differences ; and they oftentimes giue thence a kind of commentarie as well as a translation. Neither is it ill context, that *shenith* of the foeminin gender should be ioind to *maigshber* of the masculin. it is not without frequent example in holy Writ. That their word *ἐν τῇ τρίτῃ* (not very vsuall for Tithe) was most proper, and hath no worse originall then <sup>1</sup> *Athens* it self, where by that name, the Tenth of Mulcts and Goods confiscat, was sacred to *Minerua*. But this place of the *year of Tubing*, is interpreted by the common Gloss<sup>m</sup> of the Iewes by the *yeere of one Tube*, as if the text had been שנה חמשה אחת, that is, *the year of one Tube*, or of paying only *one Tube*. Which in substance exactly agrees also with the meaning of the *Septuagint*. For in the third yeere, sayes *Iarchi*, there was only one Tithe paid of the two commonly spoken of, that is, of the *first* and *second*. The first was only paid to the *Leuits*. The second, by that name, was not : but the poore

1 Xenoph. hist.  
 Græc. 2.

m Salomon Iarchi  
 ad dist. loc. Deut.



poore mans Tithe in stead of it: and he so expounds it, that hee takes the mention of the *Leuits* there to designe out the first Tithe of that third yeer paid at *Ierusalem*, which plainly also confirms what is here before declared. The *second* then, and the *Tithe of the third yeer* are the same in substance. The payment of all appeares in this example.

IV. After the first fruits paid in eares, admit The increase 6000. Ephahs; the *beaue Offring* at least must be 100.

The remainder 5900. The *first Tibe*, 590. and out of this 59. to the Priests.

The remainder 5310. Out of this, the *second Tibe*, 531. which euery two yeeres the *Leuits* had at *Ierusalem*, and euery third yeere was spent in the gates of the husbandmen.

The rest being 4779. was kept for the husbandman.

So that of 6000. Ephaphs, the *Leuits* and poore had in all 1063. whole to themselues, the Priests 159. and the husbandman only 4779. Hee yeerely thus paid more then a *sixt part of his increase*, beside first-fruits; almost a fift. Many of no small name, grossly slip in reckoning and diuiding these kinds of their Tithes. But this here deliuered, is from the holy text and the *Iewish* Lawiers.

V. Of their *Cattell*; the *first borne* were <sup>n</sup> the *Lords*, paid to the Priest of clean beasts in kind; of vneclean in money, with a *fift part* added. Of the in-

<sup>n</sup> Exod. 13. 2.



crease of them, one Tithe only was paid, and that to the Leuits. *Euery Tithe of Bullock and of Sheep of all that goeth vnder the Rod, the Tenth shall be holy to the Lord*, sayes holy ° Writ. Thence at the Tithing they vsed to shut the Lambs (for example) in a sheep-cote, where the straitnesse of the door might permit but one at once to come out. Then, opening the door, either gently to hunt them out, or by placing the Ewes bleating neere them without, so to cause them run forth one by one, while a seruant standing at the door with a rod coloured with oker, solemnly told to the Tenth; which with his rod he markt. so they p vnderstand going vnder the Rod. that so markt, what euer it were, male or female, worst or best, was the Tithe, and might not be changed.

VI. How the payment of these Tenth was either obserued or discontinued, partly appears in holy 9 Writ, partly in their institution of more trustie Ouer-seers (whom they called **וְאִנְיָוִי**) for the true payment of them. For after the new dedication of the Temple by *Iudas Machabæus*, vntill his fourth successor \* *Ioannes Hyrcanus* (being neer thirtie yeers) all duly paid their *first fruits* and *The-rumaks*, but the *first* or *second Tithe* few or none iustly; and that through the corruption of those Ouer-seers. Whereupon their great *Sanedrim*, or Court of seuentie Elders (that is, the **בֵּית דִּין הַגָּדוֹל**, that is, *the greatest Court*, that determind also, as a Parliament, of matters of State) enacted, that the Ouer-seers should be chosen of honest men; and withall, that of such things, whereof, by such corruption, or otherwise,

α Luit. 27. 26.  
ε 32.

p Tarchi ad Leuit.  
cap. 27. & Rambam  
in Masach. de pri-  
mogeniu, c. 7.

q 2. Paralip. 31.  
Malach. 3. &  
Nehem. cap. 13.

\* Remon de  
decimus, cap. 9.

otherwise, it was indifferently doubtfull, whether Tithe were iustly paid or no (of which kind, almost all increase, at the time of this act made, was) a *beaue Offring* or *Therumab* of the Tenth of all, that is, a *hundreth part*, should be giuen to the Priests, and then the second Tithe at the Temple should be paid. but no first Tithe or poore mans Tithe was paid of any such things. These kind of goods they called דמאי *Demai*, whereof a speciall *Massecheth* or treatise is in the *Talmud*, in the *Seder Zeraim*. From that act of the *Sanedrim*, to the last destruction of the Temple, it seems, the iust payment of Tithes continued; and thereof testimonie is (for the time neere the destruction) in <sup>r</sup> holy Writ. But in *Tithing* and offering *Therumabs*, the Pharisees were most curious and deuout. they gaue perhaps *Tithe* after both the *Legall Tithes* paid, beside *fiftieth parts*, and sometime *thirtieths* for their *Therumabs*. So may be vnderstood that of them, <sup>r</sup> ἀποδεχόμενοι ὃ τὴν δεκάτην, τὰς αὖ παρχὰς ἐδίδου, ὀριακοὺς τε καὶ πεντηκοτούδας, which you may interpret, *they tithed what was already tithed, they gaue first fruits, thirtieth parts and fiftieth parts*. but I dare not iustifie the translation. neither doe I belecue, that *E-piphanius* there sufficiently vnderstood what they did in their Tithing, nor is his meaning easily, I doubt, apprehended. The like may be, with modesty enough to, said of S. <sup>u</sup> *Chrysostome*, speaking of the Iewish Legall liberalitie to the Leuits. Ἐνδύσσον, sayes hee, ὅσα Ἰουδαῖοι ἐδίδουσιν, δεκάτας, αὖ παρχὰς, πάλιν δεκάτας, καὶ πάλιν ἀλλὰς δεκάτας καὶ πάλιν τὰς ἑτέρας τετρακοντάδας καὶ τὸ σέξον, καὶ ὅσας ἔλαβον ἐν πόλει ἰδίοισιν. *Obserue but how much the Iews gaue*

<sup>r</sup> Ep ad Heb.  
cap. 7.9.

<sup>r</sup> Epiphan. lib. 1.  
lib. 2. 10. Vide, si  
placet, Casaubon.  
aduers. Baron.  
pag. 63. & 64.

<sup>u</sup> In serm. 103.  
τὴν δεκάτην,  
tam. 6. pag. 897. &  
λογ. 9. in Epist.  
ad Philonem,  
tam. 4. pag. 14. edi-  
tione Sauliana.

x Exod. 36. 12.

(to their Levites and Priests) as *Tenths*, first *Fruits*, then *Tenths* again, then other *Tenths*, and again other *thirteenth*, and the <sup>x</sup> *Sicle*, and yet no man said they eat (or had) too much. so are his words, in two places of his works exactly the same; saving only that in one the varietie of reading hath *τρεκαδοντάς* for *thirteenth*. I confesse I equally am ignorant of both. neither is his enumeration consonant with what the Moniments of the Iews or the holy Text will warrant. Coniectures vpon it, I leaue to others. some probable enough might here be brought, but I willingly abstaine.

y Luc. 11. 42.  
Matth. 23. 23.

z Deut. 16. 12.

VII. That tithing of *γ πᾶν ἀγρόν*, euery herbe, which is spoken of in the Gospell, (and obserued by the *Scribes* and *Pharisees*) was neuer commanded in Scripture, nor by their Canon Law requisit, according to the opinion of their Doctors, who restrain the payment of Tithes to that <sup>z</sup> *הבואה*, that is, *thy increase*, spoken of by *Moses*; and comprehend not herbs vnder that name. They deliuer indeed that by tradition from their fathers, all things growing out of the earth, and fit for mans meat, are titheable, which their <sup>a</sup> Lawyers thus regularly expresse, *כל איכל אדם חנשומר שגידולו מן הארץ חייב*, *כל איכל אדם חנשומר*, בתרומות, that is, *Euery thing that is kept as mans meat, and hath his growth from the earth, must pay the beaue Offering, and likewise Tithe*; Whence they make such herbes as are mans meat, titheable, but all such as are not mans meat, they discharge of Tithes. and out of that rule also they except whatsoeuer was gleaned <sup>b</sup> either out of eares

a Toseph. part. 3.  
tract de Theru-  
moth, cap. 2. &  
Mishotzi in pra-  
cept. 143.b I. iur. 19. 9. &  
10.

of

of Corne, or Grapes, or had out of the corners of the field left in haruest. But, it seems, that for this payment of Herbs, the Pharisees were of the truer side. Our Sauour likes well their payment, and expressly saies, *they ought not omit it*, which admonition of his was to them while yet the Mosaicall Laws were not all expired by the *consummatum est*.

VIII. After the second Temple destroyed, and dispersion of the *Jews*, their Law of *first fruits*, *Tithes*, and *Tribes*, with them ceased. For their Doctors determin that regularly no inhabitants, but of the land of Israel, were to pay any; although also among them be a wise exception for the lands of *Senaar*, *Moab*, *Ammon*, and *Egypt*, because the first is neer their land of *Israel*, and many *Israelites* went thither and dwelt there, and the other three are round adioyning to their land of *Israel*. But they deliuer that who so of them took the profits of land mongst the *Cuthians* or *Samaritans*, their old enemies (or elsewhere in *Aram*; and so, it seems, by consequent in any other land, sauing which they except) was not to pay any, touching which point many speciall cases are put by *Rabbi Ben Maimon*. At this day by their Law they pay none; Those that liue in their land of *Israel*, for want of their Priesthood and Temple; those that liue dispersed in other Countries, both for that reason, as also for the other which restrain the payment of them to *Canaan*. and herein they all agree. But the great *Ioseph Scaliger* saies, he askt some of them whether, if they might again build their Temple (as after the captiuitie they

c. In *Kol Charcha*  
tract de *Tithumab*,  
c. 1. & *Mikraji in*  
*Tractat*, 133.

did) their Laws of Sacrifices, first Fruits, & Tithes, would be then reuiud; and their answer was, that to build it again were to no purpose, because they had no lawfull Priesthood, there being not one of them that can proue himselfe a Leuit, though many pretend to be so, and some bear also the office of a kind of Priesthood amongst them. And (for example herein amongst our own Ancestors) when the Iews liued here they had, it seems, one generall or high Priest ouer them, vsually confirmd at least, if not constituted, by the King, for life; as appears by Record, prouing that both *Richard* the first and King *Iohn* did by their Patents grant the same. the Copie of it being a most rare example and not from this purpose, take here transcribed. *Rex omnibus fidelibus suis, & omnibus & Iudæis, & Anglis salutem. Sciatis nos concessisse, & presenti Charta nostra confirmasse Iacobo Iudæo de Londonijs Presbytero Iudæorum, Presbyteratum omnium Iudæorum totius Angliæ, habendum & tenendum quamdiu vixerit, liberè, & quietè, & honorificè, & integrè, ita quod nemo ei super hoc molestiam aliquam, aut grauamen inferre præsumat. Quare volumus & firmiter præcipimus quod eidem Iacobo quoad vixerit Presbyteratum Iudæorum per totam Angliam garantetis, manuteneatis & pacifice defendatis; & si quis ei super eo forisfacere præsumserit, id ei sine dilaticne (saluâ nobis emendâ nostrâ) de forisfactura nostra emendari faciatis, tanquam Dominico Iudæo nostro quem specialiter in seruitio nostro retinuimus. Prohibemus etiam ne de aliquo ad se pertinente ponatur in placitum, nisi coram nobis*  
*aut*

*Rot. Car. 1. Reg.  
Iob. part. 1. memb.  
38. Car. 171.*

aut coram Capitali Iustitia nostra, sicut Carta Regis Richardi fratris nostri testatur. Teste S. Batboniensis Episcopo &c. Dat. per manus H. Cantuariensis Archiepiscopi Cancellarij nostri apud Rothomagum XXXI. die Iulij anno Regni nostri primo. Its true that Presbyteratus might denote aswell some Lay eldership. but as vnlikely 'tis that in that age the Clergie men that were officers of the Chancerie, and most commonly drew the Patents, at least iudged of the language, would transference their name of Presbyteratus to any such signification; so also I suppose that any such Lay or Ciuill Officer among them could not haue scaped often mention in the Records of Iudaisme, yet remayning. Many of them I haue perused, but neuer met with the name elsewhere then in this Roll. But to this Priest *Iacob* or other like him among them, no Tithes, first Fruits or Therumahs, were, or are by their Canons payable. and agreeing to them exprelly herein is <sup>d</sup> *Eusebius*, who, amongst other of their Mosaicall Laws, puts their paying of Tithes for one specially that was confined to the Land of *Israel* and *Ierusalem*. for, first reciting that about eating the Tithes in the place, <sup>e</sup> *which the Lord shall chuse to cause his name to dwell there*, (which indeed is only spoken of the second Tithe of the first and second yeers) and ioyning it with the generall commandement of Tithing, and with the precepts of the Passeouer, of the feast of Weeks, and of Tabernacles. in which a certain *Place* by such an indefinit designment is also mentioned; he addes a length with reference to them all; Δὲ πᾶσιν οὖν τῶν

d A<sup>o</sup> 2<sup>o</sup> 1<sup>o</sup> 2<sup>o</sup>.  
i<sup>o</sup> 2<sup>o</sup> 1<sup>o</sup> 2<sup>o</sup>. lib. a.  
cap. a.

e Deu. 14. 23.  
Cap. 16.

τίποι δὲ συνεμαυνέμετο πρὸς τούτους τὴν ἑαυτοῦ ἀποστολὴν πρὸς τὴν  
 αὐτοῦ, πῶς αὖ ἡμεῖς τοῖς τῆς Ἰουδαίας καὶ ἐν πολλοῖς οἰκιστοῖς, μὴν  
 γὰρ τοῖς κατ' ὅλους τῆς οἰκουμένης ἰσχυροῖς; seeing in so many things  
 he designes out a particular place, so often commanding  
 them to meet there (euery Tribe, euery Household) how  
 can it fit them or belong to them, that dwell but a  
 little out of Iudæa? much lesse to the Nations of the  
 whole world. But those feasts he speaks of, the Iews,  
 at this day, obserue, although not accurately accord-  
 ing to Moses his Lawes.

*Tithes how paid, or due among the Gentils.*

### C A P. III.

- I. *Some Romans paid to some Deities, and sometimes only, a Tenth of spoiles; of proceede of merchandize; of their estates; but vsually also by vow, which bound the Heire or Executor.*
- II. *Festus is falsly cited for a generall custom of payment of Tithes among the Ancients.*
- III. *Examples of Tithes paid among the Græcians.*
- IV. *How the assertions of a generall vse of giuing Tube to the Gods among the Græcians, are to be vnderstood; and why διατίθηται, that is, to Tithe, signifies also to Consecrate.*
- V. *A Tube paid to Hercules of Tyre, and Sabis an Arabian Deitie, the same with Iupiter Sabazius.*

- I. **T**He custom of the *Gentiles*, vsually talkt of in offering a Tenth, is chiefly to be considered in the *Romans* and *Græcians*. The *Romans*



*mans* had a kind of deuotion of giuing Tithes, but neither yearly, nor by compulſorie Law, as ſome faſly, but confidently, through ignorance in human literature, deliuer the welthier of them, diuers times vſed to Tithe their eſtates to *Hercules*, by ſpending the Tenth in ſacrifices, gifts to his Temples, feaſts in his Honor, and the like. it appears ſo, and to be no otherwiſe, by <sup>f</sup> *Plutarchs* words, in his queſtioning the reaſon of it. *Αἰδ π, ſaies he, τῷ Ἡρακλῆ πολλοὶ τῶν πλουτῶν ἰδρυέσθαι τὰς ἰστίαι;* *Why do many of the rich men tithe their ſubſtance to Hercules?* and elſwhere <sup>g</sup> he (as other Ancients) notes it as a ſpeciall deuotion of ſome of the ſonnes of Fortune. Neither is old <sup>h</sup> *Casſius* otherwiſe to be vnderſtood, where he deriues *Hercules* his Tenth from an innouation made by *Recaranus* in *Euanders* time. This *Recaranus*, he ſaies, firſt taught them to giue the Tenths of their fruits to *Hercules* (to whom he conſecrated an Altar vnder the name of *INVENTORI PATRI*, after he had regained his heards that *Cacus* had ſtolne) rather then to the King as before the vſe was; and then he addes, *inde videlicet tractum vt Herculi Decimam profanari mos eſſet;* that is, *thence came it to be a cuſtom, that diuers did pay him a tithe.* But, neither by their Law Ciuill or Pontificiall, was this payment. Often it was as a thankſgiuing after ſome increaſe of fortune, and often by vow beforehand, and for the moſt part, of increaſe of eſtate by mony gotten vpon ſales, and of ſpoiles of warre. For ſuch things that made acceſſions to their eſtates, they were ſometime ſo thankfull. Whereat *Cicero* ieſting, ſaies, that ne-

<sup>f</sup> In quaſt. Rom. vii.

<sup>g</sup> In Lucullo, alibi & Dioſcor. Sicul. Bibliothec. 3.

<sup>h</sup> Apud Aurel. vii. in Orig. Gen. Rom.



i De natura Deorum lib. 3.

uer any man vowd *Hercules* a Tenth, in hope of increase of his wit. *Neque* <sup>i</sup> *Herculi quisquam Decimam* vouit vnquam si sapiens factus fuisset. Of mony gotten vpon sale, an example is in the *Parasite*, that, after reckoning vp his good merchandize, saies, he must sell it as deare as he can, that he may spend the Tenth vpon *Hercules*.

k *Plautus de Stichis*.

<sup>k</sup> *Hæc vænisse iam opus est quantum potest, Vii Decumam partem Herculi polluceam.*

l In *Truculentis*.

m In *Apologues* lib. 39.

whence the same Autor vses the name of <sup>l</sup> *pars Herculanæ*. and <sup>m</sup> *Tertullian*, speaking of the prodigality of the Gentils in their feasts; *Herculanarum decimarum*. & *polluctorum sumptus tabularij supputabunt*. For spoiles of warre, witness is in that dedication of *Lucius* <sup>n</sup> *Mummius*, which got *Corinth* and setled it to the *Romans*, thus inscribed, and yet remayning at *Riete*.

n Anno ab *V.C.* 607.

° *SANCO SEMIPATRI.*

o *I. Gruter in Inscrip. p. 96. & 102. Scalig. in Catalo. vet. lib. tit. 14. plura de hoc Epigrammate, quæ adijci possent, hæc aduocare intempellum auct.*

*De decuma Victor tibi Lucii Mummiu' donum,  
Moribus antequæis hoc pro vsura dare sese,  
Visum animo so. perfecit sa pace rogans te,  
Cogendo, dissoluendo vt fælicia faxis,  
Perficias Decumam vt faciat veræ rationis.  
Propter hoc, atq; aliis donis, des cuncta roganti.*

Their *Sancus* was *Hercules*; whom they vsually titled *Semo Sancus Deus Fidius*, and the title of this transcribed by some, is, *Sanco Fidio Semo Patri*, which I rather thinke they mistake for *S. F. Semoni Patri*. That *de decuma donum* was some speciall gift made  
wit<sup>h</sup>

with the cost of the Tithe of the spoiles; and *decuma vere rationis* is there for the best of discretion and policie, as *p. edecumata* amongst the Ancients were the best and choicest parts, and *q. Decumanum* the greatest and fairest; as *fluctus decumanus*, scut a *decumana*, *decima vnda*, and the like. the great value that *Hercules* was by those vows honored with, is understood in that of *Pbaniscus* <sup>r</sup> of *Tranio*,

p Szpius apud  
Symmachum in E-  
pistolis.  
q Videlicet Angel.  
Politi. Miscell. cap. 36

r Plantius in Me-  
stellaria lib. 4.

— *vnus ishic seruus est sacerrimus*  
*Tranio; is vel Herculi conterere quæsum posciet.*

But neither did the *Romans* and their next Neighbours thus Tithe only to *Hercules*; but these their arbitrarie vows and thanksgiuings were sometimes also to other Deities. The old *Pelasgi* <sup>t</sup> that transplanted themselves into *Italie*; gaue their Tenth of gaine out of Sea-merchandize, to *Apollo* at *Delphi*, according to the Oracles direction, which at *Dodona* before had told them, that being mixt with the *Aborigines*, *δοδωνάων ἱερὸν καὶ ἄλλοι οἱ θεοὶ, they should send their Tithe to Phœbus*. That example of *Camillus*, is to euery one known. he vowd the Tenth <sup>u</sup> of the spoiles to *Apollo*, and most carefully took order, by aduice from their most learned Priests, to performe it. and *Posthumius* Dictator <sup>u</sup> long before vpon his happie victorie against the *Latins*, tithed the spoiles, spent fortie talents vpon sacrifices and prayers, in honor of the gods, and erected a Temple, with what remaind, to *Ceres*, *Bacchus*, and *Proserpina*. At other times also, on the generall worship of the gods, such a Tithe was spent And other Deities, besides any

t Diuys. Halicar-  
naß lib. 1. & Steph.  
ωπει ποδα in  
ACopy.

u Plutarch, in Ca-  
mill. Lin lib. 5.

u Vide Diuys.  
Halicaruaß lib. 5.  
& 4.

of these, had sometimes Tenths of gaine; as *Fortune*, *Mercurie*, being the gods of Trauellers and Tradefmen; and the Deities of the way, or *Dij Semitales*; as *Vius*, and others. so Noble *Scaliger* vnderstands that which *Taurinus* speaks of his father *Cesius* a Merchant, in an inscription \* to *Fortune*.

\* *Catal. H. Voss.*  
*lib. 1. p. 114.*

*Omnibus hic annis, votorum more suorum,  
Centenas adicit, numero crescente, coronas  
Fortune simulacra colens, & Apollinis aras,  
Arcanumque Vj—*

Thus in *Italie* the custom was arbitrarily to pay and vow Tithes to their Deities, and continued in vse til the later times of the Empire, as appears also in that Law receiud from *Vlpian* by \* *Iustinian*. *Si Decimam quis bonorum vouit, decima non prius esse in bonis desinit, quam fuerit separata. & si forte, qui decimam vouit, decesserit ante sepositionem, heres ipsius, hereditario nomine, decimæ obstrictus est. Vbi enim obligationem ad heredem transire constat.* by this it is manifest that though the vow, or paymēt without vow, were arbitrarie; yet, vpon death, after vow made, the Heir or Executor of him that vowed was bound to pay; according as also in like vows \* of Houses, Land, or Chattels, to the honor of a Martyr, Prophet, or Angell, the Law was among old Christians.

\* *C. tit. de Sacro-  
sanct. Eccles. l. 15.  
Si quis dominum,*

I I. The view of these examples plainly disproues that assertion vsed by many out of *Festus*: *Decima quæque veteres Djs suis offerebant.* no such matter. some did, and only sometimes, and of some things, and most vsually to some gods only. *Festus* himselfe

was

was too learned to haue left such a monument of ignorance. No doubt is, but that which *Festus* had there in some larger note obserued, according to a truth agreeing with what is before opened, was too boldly contracted into that piece of vntruth, by his Epitomator *Paulus Diaconus*. as in him, so in many other, most obseruable things haue perished, both by the ignorance aswell as negligence of insufficient Epitomators. and *Paulus* is well taxed for it by the diuine *Sealiger*. *Vide*, saies he, *quantum iuris barbarus ille sibi sumpserit in hoc loco mutilando* ! indeed, most of that, which we call and receiue as *Sextus Pompeius Festus*, is *Paulus* his only, abridged out of *Festus*. and those of the middle. <sup>a</sup> *Agēs* cited it vnder the name of *Paulus* his *Glosse*. But when *Sealiger* there addes; *Vni enim tantum Herculi hoc fiebat*; he mends it not enough. for if it had been *Decima queque Herculi veteres offerebant*, it had been false, if vnderstood as of Tithes vsed to be giuen by all or of all things. they consisted plainly in vows and speciall thanksgiuing, which were wholly arbitrarie, as Tenths or Fifteenths giuen by the Subject in Parliament. and had the offering of them been vsuall of yeerly increase, *Cato*, that in his *de Re Rustica* hath so fully the ceremonies of Sacrifices to be vsed by the husbandman in his Haruest, had neuer omitted it.

III. The *Gracians* (vnder which name, comprehend the *Asians* that were of *Greek* manners) often consecrated their Tithes to *Apollo*. witnesse an inscription at *Delphi*, sacred to him, <sup>b</sup> hauing this Verse,

<sup>a</sup> *Hiacmar, Rhemensis, episcopi, aduers. Episcop. Landanens. c. 10.*

<sup>b</sup> *Clom. Alex. Stromat. 4.*

Ὁρα. Οὐκ ἐργάτω ἀρεθίνα πικραίνουσι.

*That we may hang vp Tubes and first Fruits to the honor of Phœbus.* And, that famous <sup>c</sup> *Rhodops* sent to *Delpbi* as many spits, for vse in sacrifice, as the Tithe of that gaine which she had made of her body came to. The *Crotonians*, before their warre against the *Locrians*, vovd a Tenth <sup>d</sup> to him; and the *Locrians*, to exceed them that way, a Ninth. the Oracle hauing giuen it out, that rather by excesse in vows then armes, the victorie should be gaind. To the same Deitie the inhabitants of *Siphnus* gaue <sup>e</sup> yeerly the Tithe of their mines which they found in the Isle. And after a victorie against the *Thessalians* <sup>f</sup> had by the *Phocians*, they made two statues of the Tithe of the spoiles for him. Of *Agis* and *Agefilaus* the like deuotion is <sup>g</sup> remembred. Other like examples are. Hence was *Apollo* called *Δαμνός*, as if you should say, *Crownd with Tubes*. And in regard the offerings to him were either the Tenth, or giuen as in lieu of so much, they were stiled *δεκάτηροι ἀπαρχαί*, as if you should say, *first fruits in Tenths*.

Ἄλλα τὴν ἀμνηστὴν δεκάτηροι ἀπὸ ἀπαρχαί  
πρόμνηται

<sup>h</sup> *Callimach, in hymn, ad Delum.*

saies an ancient <sup>b</sup> to *Delos*, where *Apollo* was born and worshiped; that is, *yeerly first-fruits in Tenths are sent thee*. so I vnderstand it. But also to others, sometimes ioyn'd with him, the like offerings were. After *Pausanias* his victorie against *Mardonius*, the mony of the <sup>i</sup> Tenth of the spoiles was by consecration diuided, between *Iupiter Olympius*, *Nuptunus Isthmicus*,

<sup>i</sup> *Herodot, lib. 9.*

*Isthmicus*, and *Apollo*. elsewhere <sup>k</sup> *Diana* of *Ephesus* participats with him. To other Deities without him, somtimes was this honor giuen; as to <sup>l</sup> *Iupiter*: to whom also *Cypselus* <sup>m</sup> of *Corinth*, when he vowd all the goods of the Citizens if he could get the Citie, had speciall regard to the Tenth part, as competent to a Deitie; when to performe his vow, he gaue yeerly, for ten yeer together, the Tithe of all their estates, and left them the nine for their maintenance and merchandize. And *Cræsus* admonisht by *Cyrus*, would not haue the goods of the *Lydians* <sup>n</sup> ransackt by his Souldiers, *οι οπια αναξίους έχει δαυαλδιδύνας ης ασι*, Because necessarily they were to be tithe'd to *Iupiter*. Somtimes *Iuno* hath this part; as in <sup>o</sup> *Samos*, the Tithe of certain Merchants goods was consecrated to her in a Cup. *Pallas* sometime hath it. Diuers of the *Bæotians* and *Chalcidians* being taken prisoners by the *Athenians* and ransomed, the <sup>p</sup> *Athenians*, with the Tithe of the ransome, consecrated a Chariot to her. She also had among them the Tithe of all goods <sup>q</sup> confiscat, and that they calld *θησαυρος*. And a tradition was among them of *Priapus* a *Genius* of warre, that at *Iuno's* request taught *Mars* first to dance, and then made him a perfitt Souldier; that <sup>r</sup> *Iuno* gaue him for a perpetuall salarie, all the Tithe of the spoiles that *Mars* should gaine in his victories.

IV. These examples among the *Græcians* are, for some kind of Tithes vowd, or otherwise arbitrarily, or by some locall custom paid to speciall Deities. But testimonies are not wanting among them,

as

<sup>k</sup> *Xenoph. anab. Cyr. 4.*

<sup>l</sup> *Pausan. Elac. 2. & in Phocis.*

<sup>m</sup> *Aristot. in Oeconomic. C.*

<sup>n</sup> *Herodot. lib. 1.*

<sup>o</sup> *Idem in Melos.*

<sup>p</sup> *Idem in Temp. fictor.*

<sup>q</sup> *Xenoph. hist. Græc. lib. 1. & videlicet Morsum Anim. lib. 3. c. 13.*

<sup>r</sup> *Lucian. περὶ ὀρχήσεως.*

as generall almost as that of *Festus* is for the *Romans*.  
 τὰ ἐκ αὐτοῦ (saith *Harpocraton*, and, out of him, *Suidas*)  
 πολεμίων ἀποδόντα ἰδρυμένους τοῖς θεοῖς, *They vsed to Tithe*  
*their spoiles of warre to the gods.* and *Didymus* <sup>†</sup> an  
 old Grammarian, tels vs that, ἐν τῷ ἑλληνικῷ τὰς δεκά-  
 τας τῶν ἀφαιρημάτων τοῖς θεοῖς ἀφιερῶν, *It was a Greek custome*  
*to consecrat the Tithes of their abundance to the gods.*  
 From whence both he and *Suidas* fetch the reason  
 why δεκατέουσι, *to Tithe*, signifies also *to consecrat*. but  
 therein they are deceiud. Neither doth the *Greek*  
 phrase *to Tithe*, signifie generally *to consecrat*; but in  
 this notion it denotes only a speciall consecration  
 of yong *Athenian* Maids made to *Diana* in her feast  
*Brauronia*. None by their Law was to <sup>†</sup> haue a hus-  
 band, but such as were then initiated to her; and  
 none was to be initiated but between fiue and ten  
 yeers of age; from which vtmost yeer (because for  
 the most part till then, they staid from these Rites)  
 the Virgins to be initiated, were calld δεκάριδες, as  
 if you should say, *ten yeerlings*; and thence came  
<sup>u</sup> the word δεκατέουσι to signifie, to this purpose only,  
*to consecrat or initiat*, which otherwise was exprest  
 by ἀφαιρῶν. But if those Grammarians meant that al  
 men paid their Tithes in *Greece*, and that of euery  
 kind of their spoiles or abundance; they deceiue  
 much and are deceiud. you must vnderstand them as  
 speaking of what was sometimes, and by vow or spe-  
 ciall thanksgiuing, done. Their saying it was a *Cu-*  
*stome to tithe*, or that *they tithed*, is but like that of  
*Cassius: mos erat Herculi decimam profanari* among  
 the *Romans*. It was a custome sometime and of som-  
 things

† Apud Harpocratonem in  
 δεκατέουσιν.

† Suidas in  
 ἀφαιρῶν.

u Hesych. in  
 ἀφαιρῶν ἢ  
 Harpocraton in  
 δεκατέουσιν.



things to do it, as it was a custom to consecrate statues, haire, vessels, and other more such like to Deities. yet were those customes no more generall or binding all or done by all, then the custom, in some Cities among vs, to offer at wedding-daies. it was a custome or vse to doe so; that is, many men did so. The examples before taken out of storie make that plaine. And in that sense only are these autors to be credited, touching the consecrating of Tithes to the gods in generall. For somtimes they were generally giuen to the gods, without any particular designed. *Suidas* \* relates an example thereof, among the *Ly- x In Mages.*  
*dians*. And when the *Athenians* had deuided *Lesbos* into 3000. parts, they y consecrated 300. that is the y *Thucydides lib.*  
Tenth, generally to the gods. and *Pisistratus* writing y. τοις θεοις  
to *Solon* touching the tribute of a Tenth, saies, that ispis θεων,  
he took Tithes of euery one of the people, not so hoc est, iερα-  
much for his owne vse, as z *ius diuinas imperialis*, as for tus arduum,  
publique sacrifice or the vse of the gods in generall. inquit Scholiastes  
and the Tenth of what the Cooks in *Athens* kild for vetus,  
meat, was so due for a publique vse in honor of the z *Lam. de vit.*  
gods, if my Autor deceiue not. *Philos. lib. 2.*

V. Here may be added to the *Gracians* vse, the example of the b *Carthaginians*, that sent the Tithe b *Justin. lib. 18.*  
of their *Sicilian* spoiles to *Hercules* at *Tyre*. and you may remember that *Arabian* Law, wherein euery Merchant was bound to carrie his Frankincense to *Sabota* (which the learned take to be *Saubatha* in *Ptolemie*; the chiefe Citie of *Arabia felix*) and there offer to their god *Sabis* the c Tenth of it, c *Plin. lib. 12.*  
which his Priests receiued. neither might any sale be cap. 14.



d. Cell' ap. Orig.  
nem lib. 2. Arriana.  
do gest. Alex. 2.  
Strabo l. b. 15.  
Herodot. lib. 7.

made of it till that was paid. *Sabis* doubtlesse was their *Bacchus*, *Vranus*, *Iupiter*, or *Sabazius*; which are one. For the Deities of the *Arabians* were alwaies accounted but <sup>a</sup> two: the god *Vranus* (known also by those other names) and the goddesse *Vrania* or *Venus*; it is neereest truth therefore, that their *Sabis* is the same with *Sabazius*, which was first corrupted from *Zabaoth*, commonly occurring in holy Writ as an attribute to the only and true GOD. and as this name, so the payment of the Tenth very likely came to them from the vse of it among the *Jews*, their Neighbours, as also to the *Cartaginians* from their Ancestors the *Phœnicians*, that spake the same language with the *Jews* and conuerst most with them. Neither is it vnlikely but that the ancient and most known examples of *Abraham*, gaue the first ground, both to them and to the *Europeans*, so sometimes to dispose the Tenth of their spoiles of warre to holy vses. For tis no newes to haue the eldest of *Iewish* customs vsurpt (though according to time and place diuersly varied) amongst the *Gentiles*. What of later time is found among *Mahumedans* for the Tenth paid, must be referd to the *Mosaicall* Law, which they receiue as authentique, but keep it according to *Mahumeds* fancie, and the doctrine of his Canonists. You may remember here <sup>a</sup> *Eudemus* his relation of some kind of beasts in *Africa* that alwaies deuided their prey into eleuen parts, but would eate only the Ten, leauing the Eleuenth as *απαρχὴν πρῶτην τῆς δαπάνης*, a kind of first Fruis or Tisbe. So saies my Autor, and take his word alone; I am not his Suertie.

In

<sup>a</sup> Apud *Alba* um  
τρεπὶ *Σάβω*,  
lib. 4. cap. 53.

In the first foure hundred years after Christ.

C. A. P. IV.

I. No vse of Tithes occurs till about the end of this foure hundred yeeres. Offerings and Monthly pay for maintenance of the Church in the primitive times.

Diuisiones Mensuræ. Sportulæ.

II. Payment of Tithes of Mines and Quarries to Christian Emperors. The wealth of the Church enuied.

III. The opinion of Origen touching Tithes.

IV. Constitutions of those times, that mention them, are of no credit.

I. **S**INCE our Sauour, the time being about M D C. yeers, it will fall aptly enough so to diuide that number quadripartitly, that we may discouer the known *Vse*, *Opinion*, and *Constitutions* of euery foure hundred years, touching the dutie or paiment of Tenths. the difference or latitude of XX. yeers or some such number, either of increase or want (as occasion shall serue) being allowed. and the *English Law* and *Vse* (because therein we shall be most particular) being referd to the last seuen Chapters. Till towards the end of the first foure hundred, no *Paiment* of them can be proued to haue been in vse. Some *Opinion* is of their being due. and *Constitutions* also; but such, as are of no credit. For the first; 'tis best declared by shewing the course of the Church-maintenance in that time.

So liberall, in the begining of Christianitie, was the deuotion of the beleeuers, that their bountie, to the Euangelicall Priesthood, farre exceeded what the Tenth could haue been. For if you look to the first of the *Apostles* times; then the vnitie<sup>f</sup> of heart among them, about *Ierusalem*, was such that all was in common and none wanted, and *as many as were possessors of lands or houses, sold them and brought the price of the things that were sold and laid it down at the Apostles feet, and it was distributed vnto euery man according as he had need.* And the whole Church, both Lay and Clergie, then liud in common as the Monks did afterward about the end of the first foure hundred yeers, as *8 S. Chrysostom* notes. *ἅτοι* (saies he) *οἱ ἐν τοῖς μοναστηρίοις ὥσπερ τὸν αὐτὸν τῶν οἱ πῶτος*, that is, *so they liue now in Monasteries, as then the beleeuers liud.* But this kind of hauing all things in common, scarce at all continued. For we see, not long after in the Church of *Antiochia* (where Christianitie was first of all, by that name, profest) euery one of the Disciples<sup>h</sup> had a speciall abilitie or estate of his own. So in *Galatia* and in *Corinth*, where *S. Paul* ordaind<sup>i</sup> that *weekly offerings* for the Saints should be giuen by euery man as hee had thrived in his estate. By example of these, the course of *monthly Offerings* succeeded in the next ages. Those *monthly Offerings* giuen by deuout and able Christians, the Bishops or Officers appointed<sup>k</sup> in the Church, receiud; and carefully and charitably disposed them on Christian worship, the maintenance of the Clergie, feeding, clothing, and burying their poor brethren,

*1. Act. cap. 4. 34.*

*2. Homil. 11. in Acta.*

*h. Act. Apostol. cap. 11. 19.*

*i. Epist. 1. ad Corinth. cap. 16. 2. vide Ockam. in Op. 90. diu. cap. 107.*

*k. Vide Synod. Gangr. Cau. 66.*

thren, widows, orphans, persons tyrannically condemned to the Mines, to Prison, or banisht by deportation into Isles. They were called *Stipes* (which is a word borrowed from the use of the Heathens in their collections made for their Temples and Deities) neither were they exacted by Canon or otherwise, but arbitrarily giuen; as by testimonie of most learned <sup>1</sup> *Tertullian*, that liued about CC. yeers after Christ, is apparant. *Neque pretio* (are his words) *vllares Dei constat. Etiam si quod arcæ genus est, non de oneraria summa quasi redemptæ religionis congregatur. modicam vnusquisq; Stipem mensurâ die vel cum velit, & si modo velit, & si modo possit, apponit. Nam nemo compellitur, sed sponte confert. Hæc quasi deposita pietatis sunt.* And then he shews the imployment of them in those charitable vses. Some authoritie <sup>m</sup> is, that about this time lands began also to be giuen to the Church. If they were so; out of the profits of them and this kind of Offerings, was made a treasure; and out of that, which was increased so monthly, was a monthly pay giuen to the Priests and Ministers of the Gospell (as a salarie for their seruice) and that either by the hand or care of the Bishop, or of some Elders appointed as *Oeconomi* or Wardens. Those monthly paies they called *mensurne diuisiones*, as you may see in <sup>n</sup> *S. Cyprian*, who wrote being Bishop of *Carthage*, about the yeere CCL. and, speaking familiarly of this use, calls the Brethren that cast in their monthly offerings, *fratres sportulantes*, vnderstanding the offerings vnder the word *sportula*, which at first in *Rome* denoted a kind

1 *Apologetic. cap.*  
39. & *videlicet cap.*  
42.

m *Urban 1. in E.*  
*pist. c. 12 q. 1. & 10.*  
Sed & vide *Euseb.*  
*Eccles. hist. lib. 9.*  
cap. 9. *Edict. Maxi-*  
*mini, & lib. 10.*  
cap. 5. *Edict. Con-*  
*stantin. & in lib. 3.*  
*de vita Constantini*  
*cap. 39.*

n *Cyprian. Epist.*  
27 & 34. & vide  
*Epist. 35. editione*  
*Pammeliana.*

of running banquets distributed at great mens hou-  
ses to such as visited for salutation, which being oft-  
times also giuen in mony (as you may remember out  
of *Martial*) the word came at length to signifie both  
those salaries, wages, or fees, which either ° Iudges  
or Ministers of Courts of Iustice, receiue as due to  
their places, as also to denote the Oblations giuen  
to make a treasure for the salaries and maintenance  
of the Ministers of the Church in this primitiue  
Age. and to this purpose was it also vs'd in later  
times. But because that passage of *S. Cyprian*,  
where he vses this phrase, well shews also the course  
of the maintenance of the Church in his time, take  
it here transcribed. but first know the drift of his E-  
pistle to be a reprehension of *Geminus Faustinus* a  
Priest his being troubled with the care of a Ward-  
ship, whereas such, as take that dignitie vpon them,  
should (hee saies) be free from all secular troubles  
like the Leuits, who were prouided for in Tithes. *Ut*  
*qui* (as he writes) *operationibus diuinis insistebant, in*  
*nulla re auocarentur, nec cogitare aut agere secularia*  
*cogerentur.* and then hee addes, *Quæ nunc ratio &*  
*forma in Clero tenetur, ut qui in Ecclesia Domini ad*  
*ordinationem Clericalem promouentur nullo modo ab*  
*administratione diuina auocentur sed in honore Sportu-*  
*lantium fratrum, tanquam Decimas ex fructibus acci-*  
*pientes, ab Altari & Sacrificijs non recedant, & die*  
*ac nocte cœlestibus rebus & spiritalibus seruiant.*  
which plainly agrees with that course of monthly  
pay, made out of the Oblations brought into the  
Treasurie; which kind of meanes he compares to  
that

o *Papian. ff. de*  
*Deurion. l. 6. §. 1.*  
*& C. sit de Sportu-*  
*lu. & vide Glosf-*  
*sa. Græc. in iis*  
*Συνοπτικά.*

p *Council Chalced.*  
*A. D. 451. in libell.*  
*Samuelis & al.*  
*contra Iban. & vi-*  
*clesis Tom. 3. Con-*  
*cil. fol. 231. cap. 31.*  
*edit. Bini penul-*  
*tima.*

q *Epist. 66. edit.*  
*Pannm.*

that of the *Leuits*, as being proportionable. But hence also 'tis manifest, that no payment of Tithes was in S. *Cyprians* time in vse, although some, too rashly, from this very place would inferre so much. those words *tanquam Decimas accipientes* (which continues the comparing of Ministers of the Gospel with the *Leuits*) plainly exclude them. And elsewhere also the same Father finding fault with a coldnes of deuotion that then posselt many, in regard of what was in vse in the Apostles times, and seeing that the Oblations giuen were lesse then vsually before, expresses <sup>r</sup> their neglect to the Church, with, *at nunc de patrimonio nec Decimas damus*. whence, as you may gather, that no vsuall paiment was of them, so withall obserue in his expression, that the liberaltie formerly vsed had been such, that, in respect thereof, Tenth were a small part. vnderstand it as if he had said, *but now we giue not so much as any part worth speaking of*. Neither for ought appears in old monuments of credit, till neer the end of this first four hundred yeers, was any paiment to the Church of any tenth part, as a Tenth, at all in vse.

<sup>r</sup> De Priuilegiis Ecclesie, S. 23.

I I. But some Laws of this time yet remaine, which shew that Tenth out of Mines and of Quarries were paid, both to the Emperor and to the Lord of the soile; as in the ancient state of *Rome* the Tenants of the Lands of the Empire paid for Rent the <sup>r</sup> Tenth of their Corne, whence the Publicans that hired it (as the Customers doe here the Kings custome) were called *Decumani*. those Laws for the Tenth of Mines and Quarries, were made by

<sup>r</sup> Apian. lib. 3. C. 2.

z C. de Metalla-  
ris l. 3. (uelli. &  
in C. Theodof. lib. 10  
tit. 19. l. 10. & 11.

by *Gratian, Valentinian, and Theodosius*, Christian Emperors, about C C C. LXXX. and shew with-  
all that they thought not then of any Tenth of such  
things, to be giuen otherwise, when indeed (how-  
euer *Cyprian* might before haue cause to complaine  
in *Afrique*) Christian bountie in Oblations (espe-  
cially at *Rome*; and with proportion like enough in  
other Churches) so inricht the Clergie, that their  
wealthie happinesse thence was much wonderd at,  
and not a litle, from thence, enuied. For the then Bi-  
shop of *Rome* his wealth from Oblations chiefly,  
you may see <sup>u</sup> *Marcellinus*. For other of the Clergie,  
a whole Sermon is in <sup>x</sup> *S. Chrysostom* that liud at the  
end of this first C C C. yeers, against such as en-  
uied the wealth of the Church, that grew only out  
of such Christian deuotion to the Priesthood.

u *Ann. Marcell.*  
lib. 37.

x *Tom 6. edit. Sa-*  
*uilliana, pag. 897.*

ὁ τὶς ἔχρησεν  
τῶν τῶν ἱε-  
ρέων &c.

y *Homil. in Na-*  
*uar, cap. 18.*

III. As touching *Opinion* in that time; *Origen*  
a great and most learned Father, liuing about the  
yeer C C. hath a whole Homilie <sup>y</sup> vpon the Text of  
first-Fruits in the Law, wherein while he teaches that  
some things are literally to be obserud, he well ad-  
monisheth that 'tis the part of a wise Interpreter to  
find out which are so, and which not. And then first  
he deliuers his iudgement, that this of first-Fruits  
is one to be obserud still according to the letter,  
and giues this reason; *Decet enim* (as the Latin is:  
the Greek I neither haue, nor could euer learn that  
it hath been publiht) *& vtile est etiam Sacerdotibus*  
*Euangelij offerri primitias. Ita enim & Dominus di-*  
*ffosuit, vt qui Euangelium annuntiant de Euangelio*  
*viuant, & qui Altari deseruiunt de Altari participant;*  
and



and a litle after addes also for Tithes; *Et adhuc ut amplius hæc obseruanda etiam secundum literam ipsius Dei vocibus doceamur, addemus ad hæc; Dominus dicit in Euangelij; Væ vobis Scribæ & Pharisei, hypocritæ, qui decimatis mentam, hoc est, Decimam datis mentæ & cymini & anethi & præteritis quæ maiora sunt legis. hypocritæ, hæc oportet fieri & illa non omitti. Vide ergo diligentius quomodo sermo Domini vult fieri quidem omnimodè quæ maiora sunt legis. non tamen omitti & hæc quæ secundum literam designantur. Quod si dicas, quod hæc ad Phariseos dicebat non ad Discipulos; audi iterum ipsum dicentem ad Discipulos: Nisi abundauerit iustitia vestra plusquam Phariseorum & Scribarum, non intrabitis in regnum Cœlorum. Quod ergo vult fieri à Phariseis multo magis & maiore cum abundantia vult à Discipulis impleri.* And a litle after. *Quomodo ergo abundat iustitia nostra plusquam Scribarum & Phariseorum, si illi de fructibus terræ suæ gustare non audent priusquam primitias Sacerdotibus offerant & Leuitis Decimæ separentur; & ego nihil horum faciens fructibus terræ ita abutar, ut Sacerdos nesciat, Leuites ignoret, diuinum Altare non sentiat.* And in this forme, and vpon these reasons, he brings in that of Tenths in the Gospell, to proue his purpose of first-Fruits. But in his conclusion vpon it, he leaues out Tenths, and speaks only of first-Fruits, thus. *Hæc diximus asserentes mandatum de primitijs frugum vel pecorum debere etiam secundum literam stare.* What we haue transcribed shews both his opinion fully, and the ground of it; without which specially ob-

F

serued,



serued, error soon followes oftentimes in collection from autoritie. For *Opinion* of this time, thus much. More, I confesse, might be added out of some other great Fathers, as *S. Ambrose*, and *S. Augustine*. but because they fall so neer the end of our first age and continue into the second; they are omitted here and refered to the beginning of the next foure hundred yeers.

IV. For *Constitutions* of the Church; if you could beleue those supposed to be made by the Apostles, and to be collected by Pope *Clement* the first you might be sure both of payment in the Apostles times, as also of an expresse opinion as ancient for the right of Tenth. there you read: *Quæ secundum Dei mandatum tribuuntur, Decimas dico & primitias, insumat Episcopus vt homo Dei.* and the right is there largely grounded vpon the Leuiticall commandement. But no man that willingly and most grossly deceiues not himselfe, can beleue that this *Constitution* or diuers others there, are of any time neer the age of the Apostles, but many hundred yeers after. The litle worth, and lesse truth, of the whole Volume is enough discouered by diuers of the learned. and it was long since branded for a counterfait in an *Oecumenicall*<sup>b</sup> Councell, when, doubtlesse, it was not yet neither so stufte with Canons of later birth, as since it hath been. neither are there greater arguments against it as now it is, then some passages of fact that obuiously occurre in it, among which this may cleerly goe for one. Had it been the Apostles ordinance or the vse of the Church in the  
Pri-

a *Clement. in Constitutione Apostol. lib. 3. Cap. 15.*

b *Synodus in Trullo, circa a. d. 690. Can. 3.*

Primitive times, *Origen*, *Tertullian* and *Cyprian* (having such occasion to mention it) could not have been so silent of it. And is it likely that all the old Councils, from thence till neer D C. yeeres after Christ (which, being authentique beyond exception, haue speciall Canons for the lands and goods posselt by the Church, the Offerings, Reuenues, and such more) could haue omitted the name of Tenth, if either such vse or Apostolicall Law had preceded? They talke of ἐκκλησιαστικὰ πρῶματα, the goods of the Church, καρποφορίας ἐκκλησιαστικῆς or Offerings of fruits; but haue not a word any where of the Tenth part. And in those counterfait *Canons* also which some too credulously (and those also that wholly reiect the eight Books of *Clementines*) receiued as made by the Apostles, one is indeed of first Fruits (although, touching them by that name, certainly no Law was made vnder the Apostles) but no word of Tenth. Of a like credit, its to be feared, is that which is attributed to a fourth Councell at *Rome*, held about the yeer C C C. L X X X. by Pope *Damasus*. indeed (vpon Cardinall *Baronius* <sup>d</sup> his credit) in the *Vatican* the Legend of this Pope, which was vs'd to be read in the Church, is extant; and, with some miracles, are mixt in it certain decrees supposed his, and made in he knows not what Councell at *Rome*. of which one is; *Vt Decimæ at que primitiæ à fidelibus darentur, & qui detrectarent anathemate ferirentur*, as he relates it. But those decrees, being taken out of the Legend of him, neither euer were receiud as Canonickall in the Church, nor hath

c Canon. Apoc.  
cap. 3. & 4.

d Baron. Annal.  
tom. 4. ann 383.  
pag. 399. & 4. 384.  
pag. 417. edit.  
Plattiniana.

the eldest *Code* of the Church of *Rome*, or *Fulgentius*, *Cresconius*, *Isidore*, *Burchard*, *Iuo*, or *Gratian*, mention of any of them. Not because what was taken to be truly his, was altogether wanting; for the Canons of one Councell of *Rome* vnder him, his Epistles, and some Decrees are and haue been from ancient time, publique and disperfed in fom of those Compilers; and one <sup>e</sup> especially they haue of his time, which being made only for the disposition of such things as were giuen to the Church, speaks only of *Oblations*. but this of *Tithes* or any of the rest ioynd with it touching *Vsurers*, *Witches*, and other more (which *Baronius* only and first publiht to the world, out of the *Ms.*) none of them once remember. Neither before *Binius* his edition had any Volume of the Councils receiud into them a memorie of any such Decrees. vnder this *Damasus*, or any Councell of his of that number. Those kind of Acts and Legends of Popes and others, are indeed vsually stufft with such falshoods, as being bred in the middle ages among idle Monks, not only grow ancient now, but are receiud amongst vs with such reuerence, that the antiquitie which the Copies haue gaind out of later time, is mistook for a Character of truth in them for the times to which they were first, by fiction or bold interpolation, referd. In summe, no example for the Synods of succeeding ages, no antiquitie for the Compilers of the Canons, had been of equall reuerence to this of a Pope, and done at *Rome*. neither had they omitted euery of those Decrees, had they been truly his. Confidently

<sup>e</sup> C. 10. q. 1. c. 15.  
hanc consuetudine  
scdm.

dently conclude, they are supposititious. yet remember too that some colour is for the truth of such a Constitution, in regard that about that time the first memorie is of Tithes by that name paid in the primitive Church; as in the next part of this diuision shall be declared. And were that <sup>f</sup> Epistle not counterfait, which is attributed to S. Hierom, as written to this Pope vpon that question: *Virum vsus decimarum & oblationum secularibus peruenire possit*, it might be good cause to maintain the truth of this Decree of his for Tithes. But plainly that Epistle is alike fained; neither tastes it of him or of any time neer that age; nor hath it been euer receiued among that most learned Fathers works.

f C. 16 q. 1. c. 68.  
quonia. vt gendi-  
tuz D. Hieronymus  
meminit etiam  
I. nec m. 3. de extra  
de his que sunt la  
Prælat. c. 7. c. 10.  
Apostolica.

From about the yeer CCCC. till  
DCCC.

# C A P. V.

- I. Tithes were now paid in diuers places, to Abbots, to the Poore, to the Clergie.
- II. Some Consecrations were then made in perpetuall right, at the pleasure of the Owner.
- III. That storie of Charles Martell his taking away Tithes, and making them feodall, cannot be iustified.
- IV. The opinions of S. Ambrose, S. Augustine, S. Hierom, and S. Chrysostom. the first two teach, the Tenth due by Gods Law; the other two perswade only that a lesse part should not be offerd.
- V. Of Canons, for the payment of Tithes, that are attributed to this Age.

V I. No Canon or other Law was yet generally receiued to compell any payment of Tithes, although among the Offerings of deuout Christians, gifts of that quantitie, were receiued as due, by the Doctrine then in vse, in some places only.

**A**Bout the beginning of the next, or rather some yeers before the end of the first part of this diuision, and afterward, *Tenths* were paid, or, for holy vses, offerd (as the phrase was) in diuers places, in Offerings of that quantitie; and some testimonie is of *Churches* also endowd with the perpetuall right of them in the later halfe of this four hundred yeers. Great Opinion was now of their being due. And some *Canons* and Prouinciall *Constitutions*, attributed to this time, ordain a payment of them. But not aboue one of these (and that's only Prouinciall) is of any credit.

I. That they were offerd vnder the name of Tenths in part of *Italie*, may be collected out of *S. Ambrose* who was Bishop of *Millan* before, and after the yeer C C C. X C. And the like for the Diocesse of *Hippo* may be supposd out of *S. Augustines* vehement Sermon for the payment of them. The words of both these Fathers (which in relating their opinions are anon transcribed) may enough proue, that some did in those times offer them. And it may be, *S. Hierome* pointed at the receiuing of Tithes then so offerd, in those words of his, spoken in the person of a Clergie man. *Si ego pars Domini sum & funiculus hereditatis eius, nec accipio partem inter ceteras*

ter as tribus, sed quasi Leuita & Sacerdos uiuo de Decimis, & Altari seruiens Altaris oblatione sustentor, habens<sup>h</sup> victum & vestitum; his contentus ero & nudam crucem nudus sequar. But 'tis no necessitie to vnderstand him so. it may well be, that de Decimis there is but a continuance of the comparifon made by quasi Leuita; as if he had said, But liue like a Leuite that liud of the Tribes, and, seruing at the Altar, am maintaind by the offerings at the Altar &c. what in Gratian is fallly attributed to him, is before rememberd. In Ægypt also, some holy Abbots had Tithes of all fruits offerd them about the beginning of this age. Certatim Decimas vel primitias frugum suarum memorato seni (to Abbot Iohn) de suis substantijs offerebant, <sup>i</sup> saies Casian, the Hermit that liud about the yeer CCCC. XXX. and the Abbot receiues the offering with this kind acknowledgement; Deuotionem huius oblationis (cuius dispensatio mihi credita est) gratanter amplector, quia fideliter primitias vestras ac Decimas indigentium vsibus futuras, velut sacrificium Domino bonæ suauitatis offertis. Where it appears the Abbot receiued them as a Treasurer for the poor. And about the yeere CCCC. LXX. Christians also in Pannonia, by example of S. Seuerins bountie, gaue the Tenth of their fruits to the poor. Deuotissime (saies <sup>k</sup> my autor that then liud also) frugum suarum Decimas pauperibus impendebant; quod mandatum, licet cunctis ex lege notissimum sit, tamen quasi ex ore Angelî præsentis grata deuotione seruabant. And a litle after, he relates that the Inhabitants of Lauriacum (which some take for

Lor.b

h 1. ad Tim. cap. 6.3

i Collat. Abbas.  
Thoma, 21. cap. 1.  
c. 2.9

k Euseppius in vi.  
ta S. Seuerini, cap.  
17. & 18.

*Lorch in Austria*) being often admonisht by *S. Seuerin*, to pay the Tenth of their fruits to the poor, had notwithstanding omitted it; wherupon, their Corne being blasted, they humbly come vnto him, *pœnas suæ contumaciæ confitentes*, acknowledging their losse as a reward of their fault. And the Saint answers them; *Si Decimas obtulissetis pauperibus, non solum æterna mercede frueremini, verum etiam commodis possetis abundare presentibus.* whence is seen both the receiud vse of offering them in that place, as also the opinion of *Seuerin*. And in a Prouinciall Councell at <sup>1</sup> *Mascon*, held in the yeer D. LXXXVI. that is, the XXIII. of King *Gumheram*, by all the Bishops subiect to his gouernment in *France*, the payment of Tithes, into the hands of the Ministers of the Church, is spoken of, as of good antiquitie at that time, and grounded vpon the *Mosaicall* Laws, which they call there *diuinas*, and adde; *quas leges Christianorum congeries longis temporibus custodiuit intemeratas.* that long time they speak of, might haue had perhaps beginning from the doctrine of those two great Fathers, *S. Ambrose*, and *S. Augustine*, about the yeer CCCC. whereof, more presently. But obserue also that, *Leo* the Great (he was Pope from CCCC. XL. to CCCC. LX.) hath diuers Sermons, yet remayning, *De ieiunio Decimi mensis & eleemosynis*, wherein he is very earnest and large, in stirring vp euery mans deuotion, to offer, to his Parish Church, part of his receiud fruits, but, speaks not a word of any certain quantitie. The like may be noted in some Homilies of <sup>m</sup> *S. Chrysostom*, touch-

<sup>1</sup> *Marston Council,*  
2. cap. 5.

<sup>m</sup> Vide eum in  
*Epist. ad Philippens.*  
& *Sermonem* 103.  
in eos. qui Cleri-  
corum opulen-  
tiam inuiderunt.  
Tom. 6. Edit. Sa-  
uiliana.



touching the Churches maintenance, in which you might wonder how Tithes were omitted, if either deuotion or doctrine had neer the beginning of these CCCC. yeers made payment of them (especially in the more Eastern parts) of any common vse. For the later part of those yeers, see towards the end of this Chapter.

II. But beside the offering of Tenths yeerly (as was done, by the deuouter sort, sometimes to the Ministers of the Sacraments, sometimes to Abbots, and the like) a perpetuall right also of them was consecrated to some Churches, by grant or assignment, out of such or such land, at the owners pleasure; and that long before the end of this four hundred yeers. These speciall indowments may be collected from a Canon of a Councell of<sup>n</sup> *Arles*, held in the yeer DCCC. XIII. which thus speaks: *Vt Ecclesie antiquitus constituta, nec Decimis, nec vlla possessione priuentur.* and other Prouincials of that time, and Laws of *Charlemain* agree with it; as that of his thus speaking; *° Ecclesie antiquitus constituta, nec Decimis, nec alijs possessionibus priuentur, ita vt nouis oratorijs tribuantur.* These cannot well be vnderstood, vnlesse you interpret them to mean Churches anciently endowd with Tithes. And what was then about the yeer DCCC. said to be anciently endowd, must be referd back into some part of the time we now speake of. Neither are the monuments of that time without example of such endowments. It is reported that *Pipin* about the yeer DCC. L. granted the Tithes of all that lay

n. *Arles* 4. c. 9. &  
videlicet c. 16. 7. 1.  
c. 42. 43. & 44.

n. *Antiquus Capitular.* lib. 1. c. 36. &  
vide lib. 2. cap. 154

between *Ourt* and *Lefche* two Rivers of *Ardoinne*, to a church consecrated to the honor of *S. Monon*.

p. *Apud Molanum*  
in *S. Belgii* in 18.  
Olib.

So I take that in *p. S. Monon's* life. *Beato viro ob titulum Christianitatis mactato Pipinus Rex regaliter Decimas obtulit, quas habet inter Letiam & Vrtam.*

q. *Chronicon. Ca-*  
*merac & Arreb.*  
lib. 1. c. 15.

So about the yeer 9 DC. LXXX. *Decimancula* in *Rodulfi Curte*, that is, the right of a Tithes of small value, in a place calld *Rodulfs* Court, was consecrated to the Church of *Arras*. And in a confirmation

s. *Boni ac Mogunt.*  
*Epist. 151.* Alii  
sunt e ul nodi Do-  
nationes Pipini Re-  
gis & aliorum in  
Regesto Ms. Ec-  
clesie Ultraslon-  
si, quod seruat  
in Bibliotheca  
Cottoniana, & vide  
proximum caput  
de hac re.

by King *Pipin* of the foundation of the Abbey of *Fulda* (which was made in DCC. XLII.) consecrations of Tithes to the same Abbey, either alreadie made or thereafter to be made, are specially confirmed. whatsoeuer it had or thereafter should haue in *donis, oblationibus, Decimisq; fidelium, absque ullius personæ contradictione firmitate perpetuâ fruatur*, are the words. But these kinds of grants it seems were not yet in much vse. and what was of them, I ghesse, might haue beginning not long before DCC. yeers from our Sauour. For if they had been known much before, the precedent of them could hardly haue been omitted by *Marculphus*, who liud vnder King *Clouis* the second about the yeer DC. LX. and collected carefully the *Formula* or precedents of al kinds of Deeds, Conueyances, and Grants, that were practiced in his time; amongst which he hath many by the name of *Cessiones* and *Donationes*, wherein lands and other profits were giuen to this or that Church, but neuer mentions any one for the gift of Tenth.

III. If the common tale of *Charles Martell* his taking

taking away the Tithes, that Churches were endowd with, and giuing them to the Laitie, about the yeer DCC. XL. were true, it were autoritie (both for generall payment, and speciall endowment in those times) of great antiquitie and faire proof. but although that of him be receiud as a storie by diuers of late time, yet cleerly it can neuer be iustified. He was indeed a robber of the Church; but he is not mentioned by any old autor of credit, to haue medled with Tithes. He was *Monasteriorum multorum Euerfor*, and *Ecclesiasticarum pecuniarum in vsus proprios commutator*, as *† Boniface* Archbishop of *Mentz*, that liud in his time, complains of him. that is, he took Monasteries, Bishopriques, Church-Rents, and possessions from the Clergie, & prophand them to lay-hands, as a reward of their militarie seruice then done for Christianity against the *Saracens*, who from *Spain* inuaded the Countrie. wherupon also, another fiction is too patiently receiud; *†* that, *Eucherius* Bishop of *Orleans* in a vision saw him damned for it; and that by a search (according as an Angel admonished) in his tomb, it was also confirmd for truth; there being found in it, no relique of him, but only a dreadfull Serpent. The first autor of this Hobgoblin storie seems of like credit with him, who euer hee was, that first publisht that the taking of Tithes was *Martels* chief sacriledge. Tithes in his time were not so vniuersally as yet annext to churches, as that they could be the main obiect of such a sacriledge nor are they euer reckond so among

*† In Epist. ad Eustachium. Reg. Merc. apud G. Malmesb. lib. 1. cap. 4. quod tunc de Carolo isthoc ibi dicitur, in editis Bonifacii Epistolis deest.*

*† Legend. Eucherii apud Surium, tom. 1. o. Febr. & vide Gratian. c. 16. q. 1. post Canonem 59. ed t. Gregorian.*

those ancients, that largely speak of Lay mens oppression by defacing whole Monasteries and Bishopricks in the times that next succeeded. Neither is it cleer that in *Eucherius* his life, *Martell* was dead. for it is obserued and taught by that great and most learned Cardinall *Baronius*, that he liud at least ten yeers after *Eucherius*. How then could *Eucherius* cause his Tomb to be searcht, and there find a Serpent? That's enough, & truth too, that *Boniface* brands him withall for his tyrannical spoiling the Church of her other possessions; *Longa torsione & verenda morte consumtus est.* the rest is only out of the Legend of *Eucherius* his life, which (as other things for the most part of that kind) is too full of falsehoods to gain to it selfe any credit. And some late Canonists that out of his tyrannie against the Church, interpret their *Decimas infendatæ*, or *feudall Tithes*, are alike in no small error, as in the next Age shall be manifested. For neither was the course then vsed in taking the Church-reuenues for militarie maintenance, to giue them in fee to any Lay man. but leases for life were made by Church-men; to such as the Prince appointed, of great part of their possessions, wherupon certain small Rents (according to a proportion ordaind by the State) were reserud. Those leases were somtimes vpon the Princes request renewd, but vpon death of the Lessee, the estate and possession reuerted to the Church. all which appears plainly in a \* Councel held in the yeer DCC XLII. vnder Prince *Carlomann* sonne to *Martell*; where

u. Tom. 9 pag. 111.  
& 118. ed. 5. Plan-  
timana. Sed vero in  
hac re alii aliter, &  
qui curiosius hic esse  
velis, præter a qua  
facta obuia sunt, ad-  
eant Aderualdi au-  
toris verba, lib. 1.  
de miraculis S.  
Benedicti, c. 14.

n. I. aut Epist. S.  
Bonifacii post. 78.  
vix. si placeat, E-  
pist. 122. & Zuba-  
ræ PP. ad 1221 E-  
pist. 142.

where that, which was so leased, is called according to the phrase of the Time, *Ecclesiastical pecunia*, out of euery *Casata* whereof a shilling was to be reserud to the Church or Monasterie, whence it was granted. That *Casata* was a quantitie of land known certainly from the custome only of euery Countrey, as a yard land, or a hide of land with vs. the same word, but varied in gender, often occurs in old Charters of our Saxon times, especially in the Lieger books of *Worcester*, and *Abingdon*. And in that of *Abingdon*, a Charter is of King *Edm*, made y to one *Brubric* of *quinque Cassati terræ*, the title or rubricque being *Carta quique hydarum*; and another there is with the same rubricque, the words of the Charter it selfe being *quinque Mansæ*; whereupon by a Marginall note in an ancient hand, one obserues those two to denote but the same. *Nota* (saies he) *quod Hide, Cassati, & Mansæ idem sunt*. But this by the way. Of no lesse falshood or vpon other ground, then this fiction of *Martell*, is their <sup>2</sup> relation which attribute to that Synod vnder *Caroloman*, these words, *Decimas occupatas à prophanis restituiimus*. Neither course nor any storie of the time can iustifie it.

IV. For the *Opinions* of Fathers in the beginning of this Age; first, \* *S. Ambrose* thus, in a sermon of Repentance, teaches them due by Gods Law. *Non nobis sufficit* (saies he) *quod nomen Christianorum præferamus, si opera Christiana non facimus. Decimas nostras annis ingulis de cunctis frugibus, pecoribus &c. præcipi erogandas Dominus*.

y A. D. 236

2. Cent. Middelburg.  
8. &c. *Ueterichu-  
m* Te aut *Germania*  
ignari *hullu* mans  
junt. in op. a. 7.  
no te ita legent  
fundatas pecuni-  
as Eccl. suam  
Ecclesijs restitui-  
mus. Et ita Cedex  
vetustiss. Ms. 11  
7. he. aut illo *Cotto-*  
nia. 2. pecunias  
autem Decimas  
fructibus opera-  
bantur. sed *peritiam*  
& *id est* *id est*. Pecun-  
ia n. illi præda  
fuit.

\* Tom 3. serm. 11.  
2. p. 1. Dom. 1. qui-  
bus *dom. 1. & vide*  
serm. 11. *id est*.  
Domus.

Then he cites the Text of that Precept, out of *Moses*, and goes on with *Nouem partes vobis tributæ sunt, sed qui Decimas dare nolueris ad solam Decimam reuertetis*. Next, hee reprehends other offences, and addes, *Quicumque recognoscit in se quod fideliter non dederit Decimas suas, modo emendet, quod minus fecit. quid est, fideliter Decimas dare, nisi vt nec plus, nec minus aliquando Deo offeras, aut de grano tuo, aut de vino, aut de fructibus arborum, aut de pecoribus, aut de horto, aut de negotijs, aut de venatione sua. De omni substantia quam Deus homini donat, Decimam partem sibi reseruauit, & ideo non licet homini retinere illud quod Deus sibi reseruauit*. Agreeing with him, is *S. Augustine* in a whole Homily <sup>a</sup> for the right of them; About Haruest hee made it (if it be his; for it hath been doubted whether it be his or no) on the XII. Sunday after Trinitie. *Propitio Christo*, saith he, *fratres charissimi, iam propè sunt dies in quibus messes colligere debeamus, & ideo gratias agentes Deo qui dedit, de offerendis, imò reddendis Decimis cogitemus. Deus enim qui dignatus est totum dare, Decimam à nobis dignatur repetere, non sibi, sed nobis sine dubio profuturam*. and grounds himself vpon that of <sup>b</sup> *Malacky*, the text of *honor the Lord thy God with all thy substance*, and the like. Then exhorts them. *Decimæ tributæ sunt egentium animarum. redde ergo tributa pauperibus; offer libamina sacerdotibus; and admonishes, that, if they haue no fruits of the earth, they should pay the Tithe of whatsoeuer they liue by; Quodcumque te pascit <sup>c</sup> ingenium,*  
*Dei*

<sup>a</sup> In serm. de  
Temp. 1. tom. 10.  
est verò 219. edit.  
Antwerp. atque  
i. filima huius  
vocabula habentur  
in tractatu illo  
suppositio. B.  
Augustino falso  
tributo, & de re-  
ligione Catholica  
conuersationis, in-  
scripto.

<sup>b</sup> Cap. 3. 10.

<sup>c</sup> i. e. viuendi  
genus.

Dei est; & inde Decimas expetit vnde viuis; de militia, de negotio, & de artificio redde Decimas. aliud enim pro terra dependimus, aliud pro vsura vitæ pensamus. And then vrging more Texts out of the old Testament touching Tithes and first fruits, and telling them, that the neglect of payment is the cause of sterilitie and blasting; *Hæc est* (he saith) *Domini iustissima consuetudo, vt si tu illi Decimam non dederis, tu ad Decimam reuocaris.* And afterward, with much earnestnesse, *Decimæ ex debito requiruntur, & qui eas dare noluerit, res alienas inuadit. & quanti pauperes in locis vbi ipse habitat, illo Decimas non dante, fame mortui fuerint, tantorum homicidiorum reus ante tribunal æterni iudicis apparebit, quia à Domino pauperibus delegatum suis vñibus referuauit. Qui ergo sibi aut premium comparare, aut peccatorum desiderat indulgentiam promereri, reddat Decimam.* These two great Bishops agree; and from the Law giuen to the Israelites, take their whole doctrine. S. Hierome is by some vsed for an autor to the same purpose, and that from his <sup>d</sup> Commentarie to the text of *Malachy*, which (after he hath opened the words of the Prophet, being only about the neglect of payment of Tithes and first fruits; about the neglect of payment only, not the right of them) are these; *Quod de Decimis primitijsque diximus, quæ olim dabantur à populo Sacerdotibus ac Leuitis, in Ecclesiæ quoque populis intelligite, quibus præceptum est non solum Decimas dare & primitias, sed & vendere omnia quæ habent, & dare pauperibus, & sequi Dominum*  
*Salua-*

d. ad cap. 3. Malach.  
*laclia.*



Saluatorem; quod si facere nolumus, saltem Iudeorum imitemur exempla, ut pauperibus partem demus ex toto, & Sacerdotibus & Leuitis honorem debitum deferamus. Who hence thinks, that his opinion agrees with the other two, may as well inferre, that he meant also, that all men were still bound to sell all they had, as in the Apostles times. Hee speaks only, as admonishing Christians to giue their almes to the poore, and *double* *e* honor to the Labourer in the Lords seruice, not binding them at all to offer this or that part, but leauing plainly a Christian libertie; wherein yet, true deuotion indeed, as he means, should not be more backward then the Iews were, when they duly paid. He that indifferently reads him, will thinke no otherwise. Neither is S. Chrysostom at all different from him. He perswading *f* euen labourers and artificers to giue bountifully their offerings to the Church for holy vses, according to the Apostolicall ordinance in the Churches of *Corinth* and *Galatia*, brings the Iewish liberalitie in their payments of Tenth for an example (beneath which, he would not haue Christians determine their charitie) and sayes withall, that he speaks these things *not as commanding or forbidding that they should giue more, yet as thinking it fit that they should not giue lesse then the tenth part* (ἀλλὰ ὡς οἰοῦν μὴ ἐλάττω τῆς δέκατης μέρους καταθεῖναι, as his words are) of all profits gaind either from the earth, or by merchandize, or whatsoever iust employment either of person or estate. but not of Vsurie and Warre, which (at least as it was vsed in those

e 1 Tim. 5. 17.

f Rom. 13. 4. 1. ad Corinth. in cap. 16.

those primitiue Ages) was held by most Doctors  
 of the time, as vniust as Vsurie. and indeed,  
 where it was iust, there no part of the gaine or  
 spoiles was to be giuen to the Priests, by the do-  
 ctine of some <sup>h</sup> Rabbins, that affirm it as expressely  
 taught <sup>i</sup> withiu a Text of *Moses*. But his excepti-  
 on of Vsurie agrees with the Canonists of late  
 times, that will not haue Tithe paid of vniust gain,  
 no more then <sup>k</sup> *the hire of a Whore, or the price of a*  
*Dog*, was to be brought into the Temple. what is  
 there called the *price* of a Dog, is by *Iosephus* <sup>l</sup> ta-  
 ken for monie giuen for the lone of a Dog to breed  
 withall. You may adde to the opinions of this  
 time that of <sup>m</sup> *S. Gregorie*, where he admonishes  
 the hallowing of Lent, consisting of six weeks, out  
 of which, the Sundayes being taken, XXXVI.  
 dayes remain for the Tenth part of the yeer, fra-  
 ctions of dayes omitted. this Tenth of time he would  
 haue vs giue to God, *vt in lege iubemur* (as his  
 words are) *Domino Decimam rerum dare.*

V. Some Canons, both Pontificiall and Syno-  
 dall, made for the right and paiement of Tithes, are  
 attributed to the ages that fall about the midle of  
 this time. But I haue not obserud above one, that  
 is of any credit, as referd hither; neither was that  
 euer receiud into the bodie or any old Code of the  
 Canons. That one is Prouinciall, and made in the  
 yeer D. LXXXVI. in the Councell of <sup>n</sup> *Maseon*  
 (a Bishopricke in the Diocesse of *Lions*) where all  
 the Bishops of King *Guntberams* Kingdom being  
 present, speak of reforming Ecclesiasticall customs

g Videbis Laſſan-  
 tium lib. de uero  
 cultu cap. 18. &  
 Tertull. de Corona  
 Militis.

h Abrah. Ben-her-  
 san. precept. 501.  
 i Dent. cap. 18. 1.

k Ibid cap. 23. 18.

l Origen. In Isaac.  
 lib. 4. cap. 7.

m Hieron. 16. in E-  
 uangel. & dist. 5. de  
 Consecrat. c. 10.

n Mariscus. 2.  
 Can. 5.

according to an ancient example, and then begin with *Leges Diuinae, consulentes Sacerdotibus ac Ministris Ecclesiarum, pro hereditaria portione omni populo præceperunt Decimas fructuum suorum locis sacris præstare, ut nullo labore impediti per res illegitimas, spiritualibus possint vacare Ministerijs; quas leges Christianorum congeries longis temporibus custodiuit intemeratas. Vnde statuimus ut Decimas Ecclesiasticas omnis populus inferat, quibus Sacerdotes aut in pauperum vsum aut in captiuorum redemptionem erogatis, suis orationibus pacem populo ac salutem impetrent.* Here is no small testimonie aswell of ancient Practise in paying of them, as of great Opinion for their being due. But although the whole Councell hath to this day remaind with the subscriptions of the Bishops to it, yet (whateuer the cause was) not so much as any Canon of it is found mentioned, as of receiud authoritie in any of the more ancient Compilers of Synodall decrees; notwithstanding, that the fullest of them, I meane *Isidore*, liud long after this Councell held, and hath some other Synods of the Continent of *France*, as of *Orleans*, of *Arles*, of *Agatha*. But this he mentions not. The first that published it, was Frier ° *Crab*, in his Edition of the Councils vnder *Charles* the fift. Yet also in some that collected the Canons since *Isidore*, Decrees of elder time then that is, are to this purpose spoken of; as you may see in *Iuo* 2 at the end of a Decretall of *Gelasius* that was Pope in the yeer CCCC. XCII. where these words are annext, *Decimas iusto ordine,*

o Tom. 2. Consti-  
por. fol. 90.

p Decret. part. 3.  
cap. 115.

*non tantum nobis, sed maioribus nostris visum est, ple-  
bibus tantum ubi sacrosancta dantur baptismata de-  
beri.* This stands continued with the rest of *Gela-  
sius*, in the print. But in an old and very fair Copie  
neer as ancient as *Iuo*, remaining in the Librarie at  
*Pauls*, these words begin with a coloured capitall,  
as a seuerall Paragraph; and indeed are not *Gela-  
sius* his, but Pope *Leo's* the fourth, who liued a-  
boue CCC. L. yeers after. that appears plainly  
out of the Epistle ¶ of *Gelasius* (whereto they are  
annext) which *Gratian* hath in all, sauing this, ac-  
cording to *Iuo*, yet cites this passage in another  
place \* by it selfe, out of that *Leo*, from whom also  
† is likewise taken by *Anselm* and *Gregorius Pres-  
byter*, who haue in their collections the rest of *Ge-  
lasius* his Epistle according to *Iuo*, as it is noted to  
the Text publisht by command of *Gregory* the  
thirteenth. And in those Decrees † of *Gelasius*  
that are extant touching the Church-treasurie, or  
reuenue, no mention is of other then of *redditus  
Ecclesiæ & oblationes fidelium*. A like fallhood is  
committed by them \* that attribute a Prouinciall  
Constitution touching the distribution of Tithes  
amongst the Bishops and inferior Ministers to the  
first Councell of *Orleans*, held in the yeer D. VII.  
and that by finding som words to this purpose ad-  
ded to a Canon which in the printed *Iuo* ¶ hath a  
marginall reference to some Councell of *Orleans*.  
It is most certain that the first Councell of *Orleans*,  
x hath no word of Tithes in it, but speaks of the  
distribution only of such things as in *Alisario obla-*

¶ C. 12. q. 1. & 35  
¶

† C. 16. q. 1. & 45.

† Decret. Gelasii, 1  
cap. 39.

† Ex Bivio in tom.  
2. Concil. alij, qui  
de hac re agunt, 2

¶ Decret. Eb. 3.  
cap. 103.

x Concil. Arel. 1.  
cap. 9. 10. & 11.

*tionē fidelium conferuntur*, and possessions of other like kind of Church-lands. and according to that, *Burchard* and *Gratian* y cite it; who haue also those words that *Iuo* there hath, excepting only that of Tithes. And some other Prouincials of the same place and age, to the same purpose, speake afterward of *oblaciones & facultates*, but not a word of Tithes. All which shews plainly that no such matter was euer in the first Councell of *Orleans*. The truth is also that *Iuo* himself cites it not out of any Councell of *Orleans*, but from, I know not what Councell of *Toledo*, as his Ms. copie is, and as it is truly publisht in the printed book. all that directs to the Councell of *Orleans* there, being only the marginall note of *du Molin* a Canonist of *Louain* that set it forth. But neither any of *Orleans* or *Toledo* hath it all as he relates it. The truth is; that Canon of his is made vp out of two Councils indeed, the first <sup>a</sup> of *Orleans*, and the ninth of <sup>b</sup> *Toledo*, and agrees well with both, sauing for so much as is expressly spoken of Tithes. That which in those two had been ordaind for Offerings and other reuenues of the Church, he not vnfitly applies to Tithes, being a more known part of that reuenue in his time; and thither draws also an old Councell of <sup>c</sup> *Rome* as if it had spoken expressly of them, & writes all in no other syllables then <sup>d</sup> *Burchard* had before deliuered with a like title of *ex Concilio Toletano*. But this excuses not those which make the words of such a collection, out of two or three old Councils, applied to a la-

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<sup>y</sup> C. 10. q. 1. c. 7.  
dr. 111.

<sup>z</sup> Concil. Aurel. 3.  
cap. 5. & Aurel. 5.  
cap. 15.

<sup>a</sup> Aurel. 1. cap. 11.

<sup>b</sup> Toletan. 9. cap. 6.

<sup>c</sup> Synod. Rom. sub  
Sylu. Aro Papa  
cap. 4.

<sup>d</sup> Decret. lib. 3.  
cap. 136.

ter time, to go for a Canon of any one of them. Many such are occurring in *Burchard* and *Iuo* especially, and some in *Gratian*; which are noted vpon their credits, and, in some editions, placed in the times to which they attribute them; *licet forsā falso tali sint Pontifici, vel certē tali Concilio per scriptorum incuriam adscripti*, as Frier \* Crab well admonishes. A like falshood is in attributing, out of the same † *Iuo*, an expresse Canon for the payment of first Fruits and Tenths, to the Prouinciall Synod of *Siuill*, held in the yeer D. CX. in these words. *Omnes primitias & Decimas tam de pecoribus quàm de frugibus, diues simul & pauper Ecclesijs suis recte offerant.* and a litle after: *Omnis rusticus & artifex quisq; de negotio iustam Decimationem faciat.* and then, *Si quis autem hæc omnia non Decimauerit, prædo Dei est, & fur, & latro; & maledicta quæ intulit Dominus* (nd) *Cain non recte diuidenti congeruntur.* There is litle reason to doubt, but that the reference of that Canon in him, to that Councell of *Siuill* is false. The Councell of that yeer and place is extant, whole in diuers editions, as it was certified by eight Bishops which were at it; and in that no taste is of any such matter. The old Ms. copie of *Iuo*, of or very neer his time, in the Librarie of *Pauls*, hath it *ex Concilio Spanensi*, the printed book being *ex Concilio Hispalensi*; what *Spanensi* is, I know not. if it were *Spalensi*, it were the same with *Hispalensi*, for which *Spalensi* is alwaies in *Isidores* Councels; as *Spania* is sometimes a anciently for *Hispania*. what euer he meant by it,

e In Prolegom. ad  
Tom. 1. Censil.

f Petr. 3. 1. 174.  
Gaspar apud Bi-  
muro in Tom. 2.  
Censil. exjco alij.

g Palladius hist.  
Lusitana subleuata  
& in Concilio Sar-  
dicensi subscribitur.  
Ofus ab Spania &  
Censil. ab Spania.

h. *Anselmus* Ca-  
pitular lib. 1. cap. 91  
quod ipsum etiam  
habet *Iuo* part. 16.  
cap. 162.

clearly the whole Canon is of much later time; the first words of it also being nothing but the syllables of one of *Charlemains* Laws <sup>h</sup> that was not made till DCC. LXXX. yeers from Christ. that is, *Vnicuique Ecclesie mansus integer absque vllō seruitio attribuatur.* where *Mansus* is for a Farme or dwelling place, in the same sense as at this day *Manse* is vsed in the Laws of *Scotland*. Some others like these occurring are mistaken. and you may obserue that *Gratian* more warily abstained from vsing such Canons mistitled; among which also, from these. But the lesse falshood is to be imputed to *Iuo*, in regard that *Burchard* before him had almost all his syllables; from whom hee transcribed. yet that excuses not his negligence committed in not carefully examining his autor; which often causes grosse impostures, sometimes proceeding from malice, sometimes from ignorance, to be receiued as perfit truth; especially by those that cite, without more regard, Prouinciall Synods absolutely there mentioned for the first of that name, when indeed they are often of farre later time. Slothful Readers are soon so deceiued. But among the known and certain moniments of truth, till about the end of this CCCC. yeers, no Law Pontificiall, or Synodall (sauiug that of *Mascon*) determines, or commands any thing concerning Tenths; although very many are which speaking purposely and largely of Church Reuenues, Oblations, and such like, could not haue been silent of them, if that quantitie had been then established for

a cer-



a certain dutie. You may see i enough in those to which the margin refers you; all made in this part of our diuision; none vsing other words (to this purpose) then *facultates, pradia, resquarta, reprocipius, oblationes, vota fidelium, res Ecclesie delegate, or collate*, and the like, as the phraes are in the other first CCCC. yeers. some of which kind yet the Canonists and others, in Prouinciall Synods, haue in the later ages, compiling their Decrees, made to serue as if they had expressely named Tithes. as you may see in that example rememberd before out of *Iuo*, and *Burchard*; in that of the Councell of *Gangra* in C. 16. q. 1. c. 77. in *Canonibus*; in that of the 29. Chapter of *Gelasius* his Decree in the Councell of *Tribur* held DCCC. XC. cap. 13; in that of the first *Oecumenicall* Councell of *Chalcedon* cap. 17. in c. 14. of the same Synod of *Tribur*; and in that of the ninth Councell of *Toledo* \* in an old Councell of *Cologne*. hee that reads those old Canons only, as they are so applied, in late autoritie, to Tithes, might perhaps soone think that at first they were made specially and by name for them. The matter is plainly otherwise. what was ordaind in them about Oblations, is out of them in later times (Tithes and Oblations being then supposed of equall right) expressely extended also to Tithes. the word Oblations, as you see in those times, being vsuall for Tithes also when they were giuen; and *offerre Decimas* was the common phraze, for *to giue Tithes*. About the end of these yeers in a Prouinciall Synod held at *Friuli* in

i Synod. 1920. e. 4. & 70. & 48. Synod. Rom. 4. sub Symmacho PP. 4. & 6. iust. Leonis & Anthonis C. de Sacros. Eccles. L. 14. in Canonibus. & c. c. 10. q. 2. c. 2. Nouell. 130 & 131. Conc. Parisi. cap. 1. Turonensi. 2. cap. 36. Braconensi. 2. cap. 2. Leg. Wisigothorum lib. 5. & c.

k Burchard. lib. 3. cap. 135. & Iuo part. 3. cap. 201.

in D. C C. X C I. vnder *Paulinus* Patriarch of *Aquilegia*, the words are, *De Decimis verò vel primitijs (saluis scilicet allegoricarum rerum mysticis Sacramentis) nihil melius puto dicere quàm quod scriptum est in Malachia Propheta, dicente Domino; inferte omnem Decimam in horreum meum &c.* and vpon that place, the supposition of the dutie being grounded, a Commination is added; *Quis non timeat vel contremiscat illam maledictionem quam minatur nolentibus offerre?* The opinion of the Synod is here plainly seen. and it is rather a declaration by Doctrine, then a constitution by Precept.

V I. But howeuer either this of *Friuli*, or that before cited of *Mascon*, had their Prouinciall authoritie, no Canon as yet was receiued in the Church generally, as a binding Law, for payment of any certain quantitie; which not only appears in that we find none such now remaining, but also is confirmd by the testimonie of a great and learned French Bishop (in whose Prouince also *Mascon* was) that could not be ignorant of the receiued Law of his time. Hee liud and wrote very neere the end of this first foure hundred yeers (I thinke, in the very beginning of the next.) And, in a Treatise about the dispensation of Church reuenues, expressely denies, that before his time any Synod or generall doctrine of the Church had determind or ordaind any thing touching the quantitie that should be giuen; either for maintenance or building of Churches. Because his words are speciall  
auto-

autoritie also against those counterfeit titles of Canons before spoken of, they shall haue place here. *Iam verò* (saith <sup>1</sup> he) *de Donandis rebus & ordinandis Ecclesijs nihil vnquam in Synodis constitutum est, nihil à sanctis patribus publicè prædicatum. Nulla enim compulit necessitas seruente vbique religiosa deuotione & amore illustrandi Ecclesias vltro æstuante &c.* This Autot is Agobard Bishop of Lions (very learned, and of great iudgement) and had not so confidently denied what you see hee doth, if any Decree, Canon, or Councell generally receiud, had before his time commanded the payment or offering of any certain part. How the autoritie of that Councell of *Mascon* stands with his meaning, I well conceiue nor. But cleerly, hee speaks truth, in regard of what was generally receiud. For neither in the *Codex Ecclesiæ vniuersalis*, or the *Codex Ecclesiæ Romanæ*, or *Africana*, *Fulgentius Ferrandus*, *Cresconius*, or *Isidores* collection (all which, in those elder ages, were as parts of the body of the Canon Law) is once any mention of the name of Tenth. And indeed, that Councell of *Mascon*, with all other Church-Laws in <sup>m</sup> *France*, lay a long while neglected before *Agobards* time, as in the age of our fathers that of *Mascon* likewise did. Yet withall, no doubt can be made, but that in most Churches in this time, amongst the offerings of those of the deuouter sort, Tenth or greater parts of their annuall increase were giuen, according to the doctrine of those Fathers before mentioned, and those other testi-

<sup>1</sup> Agobardus Lug-  
dunensis de dispen-  
satione &c. contra  
sacrilegos, pag. 176.  
edit. Massoniana,  
Parisij.

m *Bonsac. Arch.*  
*Mogunt. epist.* 132.  
*Zacharias PP.*  
*viad. epist.* 143. &  
*1<sup>re</sup> illibaldus in vita*  
*Bonsac. cap. 9.*  
& 10.

n *Epist. 105. ad*  
*Cuthbertum Arch.*  
*Cantuariensem.*  
*Attotami item E-*  
*pistolam ibi videtis*  
*num. 107.*

o Ms. in Bibli-  
 oth. Cotton,

monies. Whereto you may adde that complaint of Boniface <sup>n</sup> Archbishop of Mentz, about D. C C L. against the Clergie. *Lac & lanas* (sayes he) *ouium Christi oblationibus quotidianis ac Decimis fidelium suscipiunt, & curam gregis Domini deponunt.* And in an Exhortation <sup>o</sup> written neer D. C C C C. yeers since: *Ille bonus Christianus est qui ad Ecclesiam frequentius venit, & de fructibus suis non gustat nisi prius ex ipsis Domino aliquid offerat; qui Decimas annis singulis Pauperibus reddit; qui Sacerdotibus honorem &c.* These also shew a vse of payment among the firmer and deuouter Christians in those times. But they were then disposed of diuersly; now you see to the Priests, now to Abbots, now to the Poor. and when they were offered to Baptissmall or Episcopall Churches, they were receiued as indefinit Offerings, the quantitie whereof was wholly arbitrarie, in respect of any constitution or generall Law in vse. The quantitie of the Offerings was arbitrarie, but some kind of Offering was necessarie. He that offered not at all, of his fruits, was compellable, it seems, by Excommunication (as in the <sup>r</sup> Easterne Church; where that compulsion also was taken from the Churches autoritie in the Patriarchat of Constantinople) but not as yet, he that offered a lesse quantitie. And that it was a speciall bountie to offer the Tenth, you may see in the old *Æthiopian* <sup>q</sup> Masse, where a distinct prayer is for those, *Qui obtulerunt munera sanctæ vnicæ, quæ est super omnes, Ecclesiæ sacrificium scilicet* <sup>r</sup> *primarum Decimarum, gratiarum actio-*

p *Phot. Nemocan.*  
*lit. 5. & C. de Epis-*  
*copa & Cleric. l. 39.*

q *Biblioth. Pa-*  
*trium, tom. 4.*

r *Forst. legen-*  
*dum primarum*  
*C. Decimarum.*

*actionis signum & monumentum.* And it seems the disposition of the Offerings were so in the Patrons power (by the practice of some places) that hee might assigne a <sup>t</sup> certaintie of them to the Minister of his Church, and employ the rest at his pleasure (which agrees enough with the right challenged, in the succeeding ages, touching Inuestiture and arbitrarie Consecrations; whereof, more in the next C C C C. yeers) although in this age also some Canons <sup>t</sup> of the Clergie subiected all new-built Churches to the Bishops gouernment; but were little obeyed. For meere Church-Laws, hitherto. Some secular Constitutions are, that about the yeer D. C C. L X X X. were made for the payment of Tithes, by *Charles* King of *France*, *Italy*, and *Lumbardy*, and afterward Emperour. But because they fall so neere the end of this part of our Diuision, and are rather to be accounted amongst the Laws of his Empire (which began not till neer X X. yeers after; that is, about D. C C C.) then only of his Kingdome, and were afterward receiud into the Imperiall Capitularies, whence we haue chiefe notice of them; they are purposely referd into the next C C C C. yeeres, as the first Latitude, required in our Diuision, permits. Neither before them, did any generall Law, that yet remains in publique, and is of credit, ordain any payment of Tenths in the Westerne Church. For in the Eastern, neuer any Law, that I haue obserud, mentions them.

*1 Council, 3. Bras-  
rensis, cap 6. & vide  
Tolietanum 9. cap. 1.*

*1 Council, Arelia-  
nenf. 1. cap. 13.*

*Between about the yeer D. CCC.  
and neere M. CC.*

### C A P. VI.

- I. Payment of Tithes, *how performed.*
- II. Arbitrarie Consecrations of *them alone (like Grants of Rents-charge) at the Lay-owners choice, to any Church or Monasterie, were frequent; and sometimes Lay-men sold them to the Church. Redimere Decimas.*
- III. Appropriations of *them with Churches; wherein they passed as by themselves, from the Patron severally and directly in point of interest. The beginning of Parish Churches. Disposition of the Offerings received there. Lay-foundations of Parish Churches. The interest that Patrons claymed. Right of Advowson. The ceremonie of putting a Cloth or Robe vpon the Patron, at the consecration of the Church. The vse of Inuestitures, by which (as by liuerie of Seign) Lay Patrons gaue their Churches. Commendatio Ecclesiae. Benefice. None anciently receiued the character of Orders, but when also the ordination was for the title of some Church. Thence came the later vse of Episcopall Institution. Whence some Patrons came to haue most part of the Tithes. Canonica portio. The Clergy and Councils against Inuestitures.*  
*Their*

*Their continuance till towards M. CC. when Institution (as it is at this day) upon presentation grew common. How Appropriations were in those times made. The ancient Episcopall right to Tithes, especially in Germanie, and the Northern parts. How Monks iustified their possession of Tithes and Parish-Churches. The right of Tithes generally denied in Turingia, to the Archbishop of Mentz.*

- IV. *Of Infeodations of Tithes into Lay-hands, both from the Clergie and Laitie; and of their Originall.*
- V. *Of Exemptions granted by the Pope. Templars and Hospitalars accounted no part of the Clergie.*
- VI. *The generall opinion was, that they are due iure diuino. but this, indifferently thought on, seems to haue denoted rather Ecclesiastique or Positiue Law (by the doctrine and practice of the Clergy) then Diuine Morall Law.*
- VII. *Laws Imperiall, and Canons Synodall and Pontificiall, for the payment of Tenths. The grosse error of some that mistake Nona and Decima in the Capitularies. The first Generall Councell that mentions Tithes.*

**T**He practice found in the time twixt about D. CCC. and M. CC. from Christ, consists in some *ordinarie payments* of Tithes, as in the former ages; in more frequent *Consecra-*



tions of a perpetuall right of them alone to any Church, or Monasterie, at the owners choice; in *Appropriations* of them with the churches in which they were by *custom* or *consecration* established; in *Infeodations* of them into Lay-hands; and in *Exemptions* for discharge of paiment. By the more generall *Opinion* of the Church, they are exprest to be due *Iure diuino*; but that is warily to be interpreted out of the generall practice cleerly allowed by the Clergie. From the beginning of this time *Canons* are very frequent for the right of them. But *the first Law* that may at all be stiled generall for it, was ordained by *Charles* the Great, and receiud, but litle practiced, through the Empire. Of all these in their order.

I. Not only from deuotion, but through Ecclesiastique censure also, aided with secular power, about the very beginning of this CCCC. yeers, many Churches in the Western Empire, had the *Tenth paid as a dutie*. This may be collected out of an Epistle written by *Alcwin* to *Charles* the Great, touching the exaction of Tithes (which hee calls *iugum Decimarum* and *plena per singulas domus exactio*) of the *Hunnes* and *Saxons*; who being then lately, by *Charles*, conquered, had newly receiued the Christian faith. *Alcwin* there aduises, that it were better for the Christian cause, to omit it amongst them, till they were grown firmer, and speaks of it as a thing of known vse among other settled Christians. His words are: *Vestra sanctissima pietas sapienti consilio prouideat, si melius sit rudibus*

*bus populis in principio fidei iugum imponere Decimarum, vt plena fiat per singulas domus exactione illarum. an Apostoli quoque ab ipso Deo Christo edocti & ad predicandum mundo missi, exactiones Decimarum exegissent, vel alicui demandassent dari, considerandum est. Scimus quia Decimatio substantiæ nostræ valde bona est. Sed melius est illam amittere quàm fidem perdere. Nos vero in fide Catholica nati, nutriti, & edocti, vix consentimus substantiam nostram plenitèr Decimari? Quanto magis tenera fides, & infantilis animus, & auara mens illarum largitati non consentit?* This Epistle was written about DCC. XCVII. as the historicall part of it perswades. and the generall Laws, by which that exaction might haue been made, are among those which about DCC. LXXX. the same Charles had ordaind in an assembly of Estates, of which more in the last Paragraph of this Chapter. But the execution of those Laws soone afterward (as anon shall be declared) failing; this practice of payment also became to be of rare vse. and although diuers Synods soon followd which commanded a Tenth, as what was due of it selfe to the Church (whence also in some places a Parochial payment doubtlesse continued, and by prescription and custom established a ciuill right in some Churches) yet \* the Laitie (not much subiecting themselues to any Church-Laws of the time, that toucht their possessions) frequently exercised their arbitrarie dispositions, especially of such of them as were not already consecrated, or by custom, or prescription settled,

\* Aliter Ecclesiastici. quod vult prox. §.

settled, and therein pretended them due only but as their own choice, either by Consecration to any Church or Monasterie whatsoever; or by Infodation into Lay-hands, should determin. And those also which were established by former Consecration, Custom, or Prescription, were very often arbitrarily disposed of also by Lay-Patrons in their Appropriations.

<sup>a</sup> *Concil. Mog. 16. q. 1. c. 43. Metens. circa ann. 890. cap. 2. Mog. circa a. d. 846. Benedictini Le. ualib. 5. a. 46.*

<sup>b</sup> *Leo 4. inc. 16. q. 2. de Monachis c. 45. & c. 56. & saepe in Capitularibus.*

<sup>c</sup> *Leg. Longobard. lib. 3. tit. 3. c. 7. Hlotarius Imp. & in Altit. 4. ad Capitular. cap. 73.*

I I. For arbitrarie Consecrations; The <sup>a</sup> Laws ordaind in the first of these CCCC. yeers, that speak of *Decimationum prouentus priori Ecclesie legitime assignatus*, and *locus ubi decimæ fuerant antiquitus consecratæ*, and *Decimæ quæ singulis dantur Ecclesijs*, and such more point at the vse of them. And although, out of any continuance alone of voluntarie paiment, a kind of Parochiall right (which also by the Laws <sup>b</sup> of the time euery Rector should haue enioyed in the Territorie where hee dispensed the Sacraments) were created, yet Consecrations of Tithes (not yet established by a ciuill title) made to the Church of another Parish at the Lay-owners choice, were practiced and continued in force; as may plainly be collected out of an old Law about the beginning of these yeeres made (but not put in execution) for punishment of such consecrations by compulsion of the partie to restore to the Church the quantitie of the Tithe so aliened. *Quicumque* (are the <sup>c</sup> words of it) *Decimam abstrahit de Ecclesia ad quam per iusitiam dari debet, & eam presumptiose, vel propter munera aut amicitiam vel aliam quamlibet occasionem, ad aliam*

*aliam Ecclesiam dederit, à Comite vel a misso nostro distringatur, vel eiusdem Decimæ quantitatem cum sua lege restituat.* So another was made against parsons, vnder paine of depriuation, that they should not perswade Parishioners to come to their Churches, & *suas decimas sibi dare.* With it agrees the complaint made about the same time in the Councell of *• Pauia*, against such as vsed to giue away their Tithes *alijs Ecclesijs pro libitu.* And many expresse examples are of such grants made, not otherwise then as of Rents charge arbitrarily created. some shall be here added. But, because since the last chapter printed, the Chartulary of the Church of *Vtrecht* among many other select moniments to the purpose of this discourse (through the fauor of that right worthy and learned *S<sup>r</sup> Robert Cotton*, my most honord friend) came to my hands, wherein an obseruable consecration of tithes in the former CCCC. yeers, is preserued; it shall here (not much out of its place) be first remembered. There, in confirmations to that Bishopricke made by *Pipin*, *Charles* the great, and other of the succeeding Emperors, is expressed that some neer ancestors of that *Charles* (as the elder *Pipin*, *Charles Martell*, *Carloman*) had giuen great endowments to it, and among them, *Omne Decimam de Mancipijs, terris, & telonijs, vel de negotio, vel de omni re; vndecunq; ad partem regiam fiscus teloneum exigere aut accipere videbatur.* it seems it must be restrained to what the grantors possessed in the Territorie about *Vtrecht*, although no such thing ap-

d *Benedict. L. 1. c. 1. 141.*

e *Synod. Turicenf. c. 16. q. 1. c. 1. 141.*  
*Canonibus 56.*

f *Videbis, ante alia, diploma nro, dat. 1. Ludouici 1. u. Imp. ratoris, in quo, quæ superiores euocauerant, reuocantur.*

pears in the diuers Charters there remaining of it. For the following times ; in the same Chartularie, is a commemoration of the possessions of the Bishopricque, wherein diuers particular Tenths possessed by speciall grant are reckond ; as Tenths of wreck, of treasure troue, of fishing. and a relation is of promise made to the Bishop by one *Gutha* to endow a Church, which he gaue to *Vtrecht*, with the Tithes of diuers Mannors. In *Beuorhem* (the words are) *tradidit Gutha Ecclesiam necdum consecratam in ius & dominium Sancti Martini* (to that Saint was the church of *Vtrecht* consecrated) *ea videlicet ratione, vt, post consecrationem eiusdem Ecclesie, Decime darentur ad supranominatam Ecclesiam de villis hys nominibus vocitatis* ; *Beuorhem*, *Gisleshem*, *Hegginghem*, *Schupildhem*. And in the yeer D C C C. LII. *Raginer* Duke of *Lorrain*, for the health of his own soule, and the soules of his wife, children, and parents, giues to the Abbey of *Vito* in *Verdun*, a whole Town called *Longuion* with the appurtenances, and all the Tithes of the Land that he had within the bounds and precinct of the same Town. *Villam nostram* (as the Charter & speaks) *qua dicitur Longuion cum omnibus appendicijs suis ac Decimis quas in Banno dictae villae habebamus*. and one of his successors *Rigimir*, by Charter dated D C C C C. XLVI. for like consideration gaue to another Monasterie, seated vpon *Moselle*, all the Tithes within the libertie of the Town where it stood, in these words ; *Imperpetuum omnes Decimas quas habeo in Banno praefati oppidi tam*

g. *Diplomat.* 27.  
 & 35. in *Stemmat.*  
*Lotharingae apud*  
*Francisci. de Roberis*

*tam in blado, quam in vino, ac alijs rebus.* where *Bannus* or *Bannum* is vsed for the continent within the vtmost precinct of the Town; in which sense *Banleuca*, as also *leuga circumiacens*, occurs in the monuments of this Kingdom, as <sup>h</sup> *Banleuca de Arundell*, for all comprehended within the limits or land adioyning, and so belonging to the Castle or Town, which are both as one to this purpose. So the Monks of *Clugny* in *Burgundie*, founded by *William* Count of *Auuergne* in the yeer DCCCC X. had Tithes of diuers possessions giuen them; which the phraze of the time stiled <sup>i</sup> *Decimas indominicatas*, in a Charter to them made by *Lewes* the fourth of *France*, in the yeer DCCCC. XXXIX. and those Tithes were often confirmed to them by Pontificiall autoritie: as by <sup>k</sup> *Agapetus* the second, <sup>l</sup> *Lucius* the second, and afterward by *Vrban* <sup>m</sup> the third, in the yeer M. C. LXXXV. in whose Bull, a recitall and confirmation also is of an instrument of *Adbemar* Bishop of *Xantoigne* made to this Monasterie, that hath these words in it. *Damus & concedimus vobis Decimas quas a Laicis acquisitis vel acquirere poteritis*, with a command that Lai-men in the precinct of their Abbey, should not conuey their Tithes to any other Churches. And when the Abbey of *Vendosme* was founded about the yeer M.L. by *Godfrey Martell* Earle of *Aniou*, the Tithes<sup>n</sup> of the Salt-pits in som part of *Poitou*, were consecrated to it. the like had the same Monasterie in some Salt-pits possessed by the Bishop of *Xantoigne*, which although it had enioied for

h In placit. de m.  
vot. & assis. apud  
Cicestr. 47. Hen. 3.  
Reg. 44.

i Biblioth. Clunia.  
conf. pag. 265.

k A.D. 943.

l A.D. 1144.  
m Biblioth. Cluni-  
ac. pag. 1447.

n Ex Tabular. Mo-  
nasterii apud Ia-  
cob. Sironandum in  
G. Pindocens.  
pag. 66.

threescore yeers, yet the Bishop began to denie any more paiement, and for his owne gaine, would haue maintained this opinion, *That no church-lands were to pay Tithes to any Church.* But Godfrey Abbot of *Vendosme* about the yeer M. C. XX. sharply corrects him in an Epistle, and shews that the opinion of all *France* and *Italie*, then was, that although lands charged to any Church with the paiement of Tithes, were possessed by another Church or Monasterie, yet the Tithes were still paiaible Parochially from the one Church to the other. That Abbots words are obseruable, because also they shew a generall practice of paiement Parochially by Churches to Churches. Nobis dictum est (*saitb • he*) quia dicitis, quod Ecclesia non debet Decimam dare. Hoc verum est, vbi Ecclesia nihil habet in Parœcia alterius Ecclesiæ, vbi verò Ecclesia, in alterius Ecclesiæ Parœcia, possessionem aliquam habet, vel quippiam quod Decimari debeat, ibi Ecclesia Ecclesiæ ꝑ Decimam reddere debet, si illud iuste possidere desiderat. Hoc tenet *Italia*, hoc tenet *Gallia*; Ibi enim nouimus Ecclesias Ecclesijs Decimas reddere, & maiores minoribus, & minores maioribus, vbi altera earum possessionem obtinet in iure alterius. hoc facimus Ecclesijs, hoc Ecclesiæ fecerunt nobis. and according to this had he a Decree for the Monasterie from Pope *Calixtus* the second. This, by the way here, for paiement among the Clergie. But for more arbitrarie consecrations by Lay men; in the yeer M. C. XXIV. *Ansellus de Garlanda*,

o Goffrid. Vendosme. lib. 3. Epist. 41.

p Ita etiam Petrus Cluniac. lib. 1. Epist. 33. & 36.



Garlanda, in his foundation of the Abbey of Saint Mary of Gornay in France, among other possessions giues it 9 *Decimam de Berchorellis*, and *Duas partes Decimæ de Bercherijs*, and *totam Decimam de Ponteuze*, and *apud Terciacum medietatem Decimæ*. Many like examples might be added, but one more only shall suffice, in which the frequencie of the practice may be easily ghest at. that is found in a Bull, of confirmation, made by Pope Innocent the III. of the possessions of the Abbey of the Holy Crosse, and S. Leufriad, in the Diocese of Roan; among which <sup>r</sup> diuers appropriated Churches are with their Tithes (and so expressed: *Ecclesia N. cum decimis*) but beside them also many Tithes seuerally granted by diuers Barons and Gentlemen to the Abbey, out of such or such lands, without any Churches, are confirmed, as *Decimam de feudo Hugonis de Senfei apud Neufuillam*. *Decimam Willielmi de Maudit apud Luderuillam de feudo Willielmi Pelet apud Amercort*. *Decimam de feudo Matthæi de Gamichys apud Maneuillam*. *Duas partes Decimarum de feudo Pagani de S. Luciano*, & *de feudo Orsell*. & *de feudo Floold*, and *Decimam de Hendieruilla*, & *de Sesseuilla in feudo Autulij*. *Decimam de Boelio in feudo Roberti filij Willielmi*. *Decimam de Mesuilla in feudo Hugonis de Lace*. & *Decimam de Buisson in feudo Hugonis Bigot &c.* If one Abbey had so many arbitrary Consecrations, who can doubt of the most common vse of them? But if you desire more examples, look in the places <sup>f</sup> noted in the margin, but especially wher anon we haue the

g In Diplomate Ludouici Crispi apud Andream Quercetum in Notis ad Petram Arlarianum, pag. 1174.

r Innocent. 3. Epist. Decretalis. 3. pag. 435. edit. Colonienf.

f Vile, si placer, Chartam Galiedi Vicecomitis Monasterio S. Dionisij datam apud Andream Quercetum, in Notis ad Bibl. Cluniac, pag. 14. Chartam W. Comitis Ruteni, apud eundem pag. 174. Adalaci Castellani Dni, apud Lac, Struandum in Notis ad Gessu. Vinloc. pag. 95. Gottfriedi Balliuil apud Aubert, Almarum in lib. de Canonica Collegijs c. 91. Innoc. 3. Epist. Decretal. lib. 1. pag. 162.

t Cap. 11.

practice of our own \* Nation by it selfe declared. Out of them all (being but few in regard of what questionlesse might be had in the Records of churches, and Monasteries, yet remayning in other States) you may find a vse of that arbitrarie disposition till about the yeer M. CC. when the distribution of Tenths also to the Poore according to the owners free will (which I take to be consecrations, or grants to Monasteries; for the Monks were vsually called *Pauperes*, and were so indeed by their vow) was expressely complained against, as a great fault of the time by Pope *Innocent* the III. For he then preaching of <sup>u</sup> *Zache's* charitie, that consisted aswell in making restitution of what was due to others, as in erogation of almes to the poor, obserus that he gaue of his own, and paid what was other mens. *Dedit proprium & reddidit alienum. Grauitur ergo peccant* (saies he) *qui Decimas & primitias non reddunt Sacerdotibus, sed eas pro voluntate sua distribuunt indigentibus.* But as great a fault as it was, it was a common one; and being committed by the Laitie was vsually allowd in fact by the Pope and the Ordinaries; whateuer they thought of it in right. And of such autoritie was this vse, that an opinion was bred from it among very great men of the Clergie, that, as arbitrarie Consecration was a cause of the right of Tithes in a Church whereto they were conueid, so continuall payment of many yeers (which being by diuers, of the more deuout, faithfully performed, those Clergie men tooke as equiualent to a personall consecration of the

<sup>u</sup> *In form. 3. de Dedications Templi pag. 83. Tom. 1. nec vigorem cuiusmodi donationes obtinere sanctiuit ille, extr. 112. de Dec c. 7. cum apostolica.*

the Tenth of their increase, whereuer it were receiued) had so settled the perpetuall right of the Tithes of any Familie, that whither soeuer it transplanted it selfe, it must still send its Tenth to the place where before it paid them; as if this continuall payment had foreuer so bound it, that it might not pay them otherwise. This was the opinion of diuers Bishops in the Patriarchat of *Grado*, as you may see by the same Pope *Innocent* his \* reprehension of them, and y of others elswhere also. Neither were these grants alwaies free consecrations, but oftentimes were made for valuable consideration giuen by the Church, which is exprest in the phrase <sup>z</sup> *Redimere Decimas*, vsed in the Synodall and Imperiall Laws, of this time, made *De Decimis quas populus dare non vult nisi quolibet modo*, or *munere ab eo redimantur*. For, howsoeuer *Hincmar* Bishop of *Rheims*, in reprehending \* the Monks of *S. Denis*, because they were about to take mony of a Parson for a right of Tithe, aduised them with *absit vt Laici audiant, quod nemo etiam peccatis publicis implicatus in mea Parochia facere audet*. as if it had been almost vnheard of in that age (he liued about DCCC. LX.) that any man had euer tooke mony for a grant of his Tithes. yet plainly the autoritie of those Laws shew, it was no such raritie. nor was it out of practice about the end of this CCCC. yeeres, as may be collected out of a question disputed in <sup>b</sup> *Alexander Hales* touching Tithes held by Lay men, *In territorio alterius Ecclesie que non potest eas redimere*. although perhaps his meaning was only

x Decretal. Epist.  
lib. 1. pag. 81.  
y Extr. de Paroch.  
cap. 5. significasti.

z Bonasii. L. unita  
Capitular. lib. 5.  
cap. 46. Contr. Ma-  
gistr. c. 16. q. 7. c. 7.  
Leges Langobard.  
lib. 3. tit. 3. cap. 8.

a Apud Flodardum  
in hist. Eccle-  
sie Rhemonensis lib. 3.  
cap. 35.

b Summa part. 3.  
quaest. 51. membr. 6.  
art. 4.

e Vide etiam quæ  
in proxima secti-  
one de *Dariv*, *Tu-*  
*ringis*, alijs item  
adteruntur,

only of feudall Tithes. But neither did the Laitie  
thus only e dispose Tithes not alreadie consecra-  
ted, but in som kind also (by Appropriations) such  
as were before established to Parochial Churches.

III. In declaration of the course of *Appropriations*, it is first necessarie, to know so much of the  
nature of Parish Churches in those times, as with-  
out which the Appropriations then vsed cannot  
be vnderstood. Briefly therefore, for Parish Chur-  
ches; it is plain that as *Metropolitique Sees*, *Patri-*  
*archats* (*Exarchats* also in the Eastern Church)  
and *Bishopriques*, those greater dignities, were  
most vsually at first ordaind and limited <sup>d</sup> accord-  
ing to the distinction of seats of gouernment, and  
inferior Cities, that had been assigned to the Sub-  
stituts or *Vicarij* of the *Preselli-prætorio* or Vice-  
Royes of the East and West Empire, so were Pa-  
rishes appointed and deuided to seuerall Ministers  
within the Ecclesiastique rule of those dignities,  
according to the conueniencies of Country Towns  
and Villages; one or more or lesse (of such as be-  
ing but e small Territories might not by the Ca-  
nons, be Bishopriques) to a Parish; the word *Pa-*  
*ræcia* or *Parish* at first denoting a whole Bisho-  
prique (which is but as a great Parish) and signify-  
ing no otherwise then *Diocese*, but afterward be-  
ing confined to what our common language re-  
strains it. The Curats of those Parishes were such  
as the Bishop appointed vnder him to haue care of  
soules in them, and those are they which the old  
Greek <sup>f</sup> Councils call *ἐπισκοπικὴν ἐκκλησίαν* or *ἐν ταῖς*  
*ἐκκλησίαις*.

d Videbis, *Ana-*  
*lect.* & *Stroph. PP.*  
in *Epist. Dioces.*  
*Hincmar, Rhemenf.*  
in *Opus.* 55 cap. 35  
& *Conulas* in-  
primis *Iosephum*  
*Scaligerum* in *No-*  
*titia Gallia*, & in  
*Epistolis* pag. 247.  
editione Franco-  
furtana. & Ph.  
Berterij, *Diatri-*  
*bas* in *Pithanon*.

e *Council. Sardic.*  
cap. 6.

f *Neocalar*, cap.  
58. & vide *Antio-*  
*chen* cap. 87. & 89.

χρημας or ἐν ταῖς κώμαις πρεσβύτεροι, that is, *Prebyteri* a *Parochiani*, within the Bishoprique. neyther were the *Chorepiscopi* much different from them. These had their Parishes assigned them, and in the Churches where they kept their Cure, the offerings of deuour Christians were receiued, and disposed of in maintenance of the Clergie and reliefe of distressed Christians, by <sup>b</sup> the *Oeconomi*, Deacons, or other Officers thereto appointed vnder the Bishop. Neither had those Parochiall Priests at first such a particular interest in the profits receiued in Oblations as of later time. All that was receiued wherefoeuer in the Bishoprique, was as a common Treasury to bee so <sup>c</sup> dispensed. One part was allowed to the maintenance of the Ministerie (out of which euery Parochiall Minister had his salary, according to the monthly pay spoken of in the first CCCC. yeers) another to the reliefe of the poor, sicke and strangers, a third to the reparation of Churches, and a fourth to the Bishop. so it appears by the ancient <sup>d</sup> Canons, if we may at least herein, coniecture of the vse of the time, by what they haue ordained. And it is like enough to haue been no otherwise, so long as these Parochiall functions were so personall that they were not as now, so annex to foundations and endowments, but rather exercised as by messengers, sent from the Bishops, who had no such reference to Lay-Patrons, as they that afterward came in vpon Inuestiture or Presentment haue had, but only were protected by some appointed by the State for <sup>e</sup> *indmor*, or *Defen-*

L

Jores

a L. g. *Alomas*.  
cap. 13.

b Vide Concil.  
*Gangr. Can. 67* &  
*Chalced. Can. 204.*

c Vide Concil.  
*Antioch. c. 103* &  
*104*, & *Urban. c. 12*  
q. 2. c. 26.

d *Synod. Rom. sub*  
*FP cap. 3* & *Gela-*  
*sin Decret. cap. 27.*  
atque hic distri-  
*ctio modus in usu*  
*erat vetustioribus*  
*Christianis; quod in-*  
*notat Halaridus*  
*Strabo (qui floruit*  
*an. 320. lib. de reb.*  
*Ecclesiast. cap. 7.*  
*vnde Grat. c. 12 q.*  
*2. c. 26. & seqq.*  
e Vide, si placeat,  
*Theodor. Balsamon*  
*in Meth. 7. atq.*  
*pag. 454. post Con-*  
*stant. Can. 7. In-*  
*struction. Nouell. 15.*  
*& Capitular. Kg-*  
*rol. & Luitpr. lib.*  
*5. cap. 31 & lib. 7.*  
*cap. 100.*

sores of the Church, as they called them. the name of *Defensores* being in the primitiue time, for this and other purposes, giuen to such Protectors, *ἄνδρες ἀπαράξαιον καὶ τῶν ἀδικημάτων*, in regard of their assistance and helpe to such as sufferd iniury, as Iustini-ans words are. And in the first ordination of this Hierarchie of Bishops and Parochiall Priests, it seemes, in some Lands wherewith the Bishopricque was endowed, the Churches were erected, in which the Bishop had a kind of right of aduowson; who, taking on him the generall care of his Diocese, ordained Incumbents in euery of them. and the oblations there receiud were of the Churches common treasure, and so to be diuided and disposed of quadripartitly. But that quadripartit diuision was chiefly in the Diocese of *Rome*. For by some<sup>t</sup> Canons of the *French, Spanisb*, and some other Churches; it was tripartit, and had other differences. But, all this in the primitiue times. and from the first establishing of Christianitie by a disposition of the Hierarchie, till about D.yeers from Christ, it seemes, it continued. and such kind of Parishes only were those spoken of in that Epistle of Pope *g Denis* the I. about CCLX. if at least that Epistle be not a fiction. if it be, then our Canonists doe ill to vse it at all. if not, then plainly they abuse it, where they pretend in it an originall of such kind of Parishes as since for the most part haue had their beginning from lay-foundations. But not long after such time as lay men began to build and endow Parish Oratories or Churches.

f. Concil. Aurel. 1.  
cap. 13. Tolcan. 9.  
cap. 6. Bracer. 2. ca.  
2. & vide Augest.  
Caritular. lib. 1. c.  
27. & Adit ad  
C. pitular. 4. cap. 37.  
& 99. 3. c. 2. &  
1099.

g. In E. ist. Decretal. & n. c. 13. q. 1. c.  
Epistola.

ches in their Lordships, and in their place or in-  
uest Chaplaines (ordained, that is, made Priests by  
the Bishop, but not instituted by Presentation as  
at this day) that might receive the offerings of  
such as repayed thither for holy service; that for-  
mer kind, of making a common treasure in every  
Diocese, was discontinued, and the Chaplaine or  
Incumbent, acknowledging the Lord, of his  
Churches Territory, for Patron, (not much other-  
wise then, as in the ancienter course, every Pa-  
rochial Priest did the Bishop that collated to him)  
received now the profits that rose out of Chri-  
stian devotion, to a particular use of his owne  
Church; the Canons neuertheless saving the  
fourth part to the Bishop. For, that Episcopall  
right grew afterward to bee so established by the  
receiue<sup>h</sup> Canon Law, that till this day, where  
prescription of XL. yeers excludes not, the fourth  
part of all Oblations and Tithes are, by it, due to  
the Bishop. and some<sup>i</sup> Canonists make it as a duty  
succeeding in lieu or proportion to the *Tenth* of  
*the Tenth* that was paid by the Levites to their  
Priests. But howeuer the Canons were (in which  
also it had bene often constituted, that every  
Church<sup>k</sup> and the profits thereof should be subiect  
to the Bishops disposition, as to the only immediat  
superior; and in some<sup>i</sup> that the founder should be  
utterly excluded from all interest) yet diuers lay-  
Patrons in those elder times had, or at least chal-  
lenged, in the Oblations receiue<sup>d</sup> from Christian

<sup>h</sup> Extr. de Offi.  
ind. cap. 16. conque-  
ritur. & de pre-  
scrip. c. 4. de quæria.

<sup>i</sup> Perennis. ad tit.  
de Decimis. c. 1. n. 3.

<sup>k</sup> Dist. 96. c. 1. 14  
q. 7. passim.

<sup>l</sup> Dist. 2. cap. 26.  
p. 1. m. 1.



deuotion in their Churches, an interest somewhat like to what more anciently the Bishop had in the offerings made at the Churches wherein hee only placed the Ministers. Whence the erecting of Churches became, amongst some, to bee rather gainfull then deuout. for the Patron would arbitrarily diuide to the Incumbent, and take the rest to his own vse. This is manifested in the I I. Councell of *Bracara*, held about D. L. X. X. where a Canon forbids the consecration of Churches built not *pro sanctorum patrocinio*, but *sub tributaria conditione*, as the vse was of some places; that is, to the end that the lay-founder might haue halfe or other part of the Oblations. *Si quis*, are the words, *Basilicam non pro deuotione fidei sed pro quæstu cupiditatis ædificat, vt quicquid ibi de oblatione populi colligitur, medium cum clericis diuidat, eo quod Basilicam in terra sua quæstus causa condiderit, quod in aliquibus locis vsque modo dicitur fieri, Hoc ergo de cætero, &c.* And such a practice is titled a custom of the ancient times in an Epistle <sup>m</sup> attributed to Pope *Damasus*. And in the I X. Councell of *Toledo* about the yeer D. C. L. X. Lay-Patrons are forbidden to vse *iuris propriæ potestatem* in Church goods or lands, as if great pretence in those times had been of their right in disposition of them. and, in the Imperiall Capitularies of about the yeer D. C. C. C. diuers times prouision is made against such lay men as thought it had been their right only to dispose of the endowments and offerings

ferings of such Churches as they were Patrons of, and that the Bishop should bee wholly excluded. But it fell at length that, without much difficulty, the Church, what through Constitutions, what through Constitutions, what by their Doctrine, had remedy for this vsurpation vpon the Offerings solemnly consecrated to the Priests at the Altar. And in the following times it had been abstained from as the playnest part of sacriledge. Yet neuerthelesse, another interest, that is, the interest of Patronage, and a right of disposition of the Temporall endowments, which the Lay founders first challenged in their new erected Churches, which was a right of Collation or Inuestiture, whereby the Incumbent might receiue full possession without ayd of Bishop or other Church-man, could not so easily be gotten from them, although some Imperials were provided against it. For although no lay man could, of himselfe, make any building to bee a Church, without the Bishops consecration of it (as euen among the Gentils, it was carefully foreseen, that in all new Temples one of the Priests solemnly holding a Pillar of it in his hand, should make the dedication) yet it being consecrated and endowed, the lay Patron, in these ancient times, tooke vpon him not only the *Advocationem*, or aduowson (that is, the defence or patrocinie of the Incumbents title; as *affieum aduocationis* is vsed in the P Imperials) but also the Collation by Inuestiture without presentation at

n *Capitular, Karoli & Ludouici 146, 7. c. 113.*

o *Cicero in Orat. pro domo sua,*

p *Plinian. ff. de rei vindicatione l. 54.*

euery vacancy. And the right of aduowson (wher-  
to the other of Inuestiture in those times was an-  
next) in some places the Bishop confirmed to him  
by putting a Robe or such like on him at the dedi-  
cation. as the example 9 is of *Vlrique* Bishop of  
*Auspourg*, in one of his dedications, about  
DCCCC. L. where *Consecratione peracta* as the  
Autor sayes ) *dotēque contradita comprobato illic*  
*presbytero, altaris procurationem commendauit, &*  
*Ecclesie Aduocationem firmiter legitimo heredi, Pā-*  
*no imposito, commendauit.* From this right of Col-  
lation and Inuestiture reserued by Lay-Patrons,  
the practice came to be that Parish-Churches and  
all the temporalities annex to them, as the glebe  
and tithes (and what else in succeeding times be-  
came to be endowments) were at euery vacancy,  
conferd by the Patrons to their new Incumbents,  
by some ceremony, not differing from our linerie  
of Seisin (which is nothing but Inuestiture; for In-  
uestiture <sup>r</sup> is only the immediat giuing of seisin or  
possession) with these words, <sup>r</sup> *Accipe Ecclesiam*, or  
the like. Neither vpon presentation did the Bishop  
institute, as of later time the vse had bin. and wher-  
as, at this day, nothing passes out of the Patron, or  
vests in the Incumbent, in point of interest ( the  
presentation being only as a nomination, and the  
interest and possession being immediatly had from  
the acts of the Bishop and Archdeacon) it was far  
otherwise in these elder times. For the Incumbent  
as really, as fully, and as immediatly receiued the  
body

9 *Anonym. in vita*  
*S. Vdalrici c. p. 7.*

r *Two Carthusi.*  
*Epist. 41. & pallim*  
*Iorisperi.*  
s *Petrus Damian,*  
*lib. 1. Epist. 13. ad*  
*Alexand. 2.*

body of his Church, his glebe & what tithes were ioynd with it, in point of interest from the Patrons hand, as a lessee for life receiues his Lands by the Lessors liuery. whence by the phrase of the time that kind of giuing a Church was stiled *Commendatio Ecclesiæ*, that is, the Lay Patrons committing or liuery of the Church and the endowments to the Incumbent to take care of and dispose as a V-sufructuary of what the Patron was Proprietarie, or as a Tenant of that whereof hee was in the reuerfion. and in such sense is *Commendo* vsed, ioynd often with *trado*, in Tully as, *Commendo, ac trado*. and hence came the *Commenda*, wherein not the Title, but possession, profits, and custody of the Church is cōmitted. and the difference is obuius between *Ecclesiā titulata* & *commendata* *commenda-ta* hauing chiefe reference to the possessions. And hence was the name of *Benefice*, for a Church and endowments so giuen. For as such lands or annuities, as in the Empire, were giuen for perpetuall salaries to military persons, had the name of *Beneficia*, so, what was thus conferrd vpon spirituall souldiers in the Church, had afterward the like title. But, at this Commendation of the temporalities so made only by the Patron, the Bishop indeed had the vsuall consecration of the Incumbent, but nothing at all to do with the dispositiō of the church or endowments. For, the Law then being that Orders could not be giuen ἀπολυτρώς, <sup>u</sup> *sine titulo*, or absolutely, but only when a Title of a Church, or  
some

1. Benefic. L. iiii.  
lib. i. cap. 83. &  
Adit. 4. c. 37. & Sy  
mod Rom. c. 16. q. 7.  
c. 33. Monachorum.

u. Const. Chalcē.  
Cap. 114. & d. 9.  
70. vide si placet,  
extra de prebend. cap.  
16. cum sequentibus.

some speciall Ministry was at the same time assigned to the ordaind Clérk; all orders otherwise giuen being void, so that at euery new inuestiture a lay Patron could not haue(as at this day)a Clérk alwaies ready made for his Church; it was a necessity that for euery new inuestiture (vnlesse a resignation of some other Church had preceded) the Bishops Ordination or Consecration was to be vsed, which afterward grew to be what now is Institution. And although the character of Orders were gnerall, in so much that, as now also, he that receiud them was a vniuersall Priest, yet, in euery Ordination, speciall expression was made of the Title of the Church (that is, the Saint, Angell, or Martyr, to whose memory the Church was dedicated; in words <sup>z</sup> to this purpose: *Eligimur in Ordinem Presbyterij &c. ad titulum S. Marie, ad Ecclesiam quæ est in pago illo &c.*) to denote that the end of it was that the Ordained should there exercise his spirituall function, and not leaue it during life. for which a Law was made also that such as were to be cōsecrated or ordaind by the Bishop, should before they were ordaind by the Patron in the Church (for the Inuestiture or Commendation was also an Ordination; and by the name of <sup>z</sup> *Ordinatus* also, was hee denoted that was so inuested should eyther by oath or caution secure their continuance vpon that Church only. so you must <sup>z</sup> vnderstand that in the Capitularies, *Vt Presbyteri qui in Titulis consecramur, secundum Canones, antequam Ordinentur promissionem, stabilitatis*

x. *Ordo Romanus de Diuini Officii.*

y. *Videbis in Duernum de sacra Eccl. Ministerio lib. 1. cap. 16.*

z. *Leuita lib. 5. cap. 108.*

*litatis loci illius faciant*; the vse then, it seemes, being, that Clerks ordaind would at their pleasure resigne into the Patrons hand ( for it is probable, that resignation <sup>a</sup> in those times, into the Patrons hand, without assent of the Bishop, like surrender of particular tenants to them in the reuerfion, was in practice, and denested the title of the Church; although at this day, by the Canon Law, it be grown cleerly otherwise) and being then capable, without new ordination of the Bishop, of any Spirituall Function, would take Inuestiture of other Churches without consent or knowledge of the Bishop; against which also, some Laws <sup>b</sup> were made in the beginning of this C C C C. yeers, but, with the rest, litle obeyed. From this vse of Commendation, or Inuestiture, it came also, that if an Aduowson had descended in coparcenerie, the Church had as many encumbents as the parceners had parts.

*Singula partes <sup>c</sup> singulos habebant Presbyteros*: Euery of them giuing an interest in a part, according as they might haue done of any other inheritance descended vnto them. Nor (as it seemes) from other originall then this challenged and practiced interest, came those *droicts honorifiques des Seigneurs es Esglises* (whereof you may see the Treatise lately written by *Matthias Marefchal*) and the custome yet remaining in diuers places, especially in *France*, whereby the Incumbent <sup>d</sup> hath not for himselfe aboue a

M

small

<sup>a</sup> Vide eundem, lib. 6. cap. 197. & lib. 7. cap. 173.

<sup>b</sup> Vide eundem, lib. 5. cap. 16, 43. & 81.

<sup>c</sup> Aditum ad Capitulum, cap. 15. & Concord. Lateran. sub Alex. 3. can. 17. & vide Append. ad diff. concil. part. 15. cap. 7.

<sup>d</sup> Vide extr. tit. de Præbend. c. 30. extirpanda, & de iure patron. c. 23. præterea, & lib. 6. tit. de Præbendis, cap. 1. suscipi. & le Code des Decrets, Forens. Decret. 15. lib. 1. tit. 10.

small part of the Tithes, at the arbitrarie disposition of some spirituall Patron, who takes the rest (according to this anciently practiced interest of Patrons) to his own vse. What is so allowd to the Incumbent, is stiled his *Canonica portio*; which was, I think, \* referued to him in some Grants of the Archbishops of *Saltzburg* as Patrons, of their Tithes, to the Abbey of *Richersperg* in the yeer M. C. XLIV. Neither let any man out of this, or from other autoritie in † Canons, gather, that all Tithes were arbitrarily disposed of by the Bishop in these midle times; which yet is falsely affirmed by some that rashly thinke, what euer a Canon mentions (because some of the Clergie would haue had it so) was a practice of the time. but the contrarie plainly and frequently appears. only as in the primitiue times, when Parishes were not distinguished by limitation of Ecclesiastique profits, but only by the Ministers Function, the Bishop alone challenged, and frequently had, all Offerings, or *agapemolau*, as appears in those old Canons before mentioned, and especially in those of the Councell ‡ of *Gangra*, made against the *Eustathians*; so also after payment of Tithes grew into more vse in these midle times, he pretended by the Canons (as in the examples which wee anon haue of the *Turingians*, and those of *Holtz*.) a right to Tithes through the whole Diocese, as his parish, where no Parochiall right was settled in

\* *Chronicle Richersperg*, pag. 176. & 204.

† *Vide Synod. v. ca. 1. sub Titulo. 9. de. D. 904. vt omnis decimatio &c. & Synod. v. eustathianis*, an. 952.

‡ *Vide Concil. Gangr. cap. 1. & 2. & ad ca. 20. aram.*



in feuerall Rectors of Parishes. But cleerly, in such as were once, according to secular Law, made proper to this or that Church, he had not, euen by the Canon Law that was in vse, more then his fourth, or other part, varied by feuerall customes; and by customes or <sup>b</sup> prescription he lost it. Neither was this practice of Inuestitures, only in bestowing of Parish Churches. In Monasteries and Bishopriques the like was but the increasing power of the Clergie took it away wholly in the lesse Churches (sauing that in collations of free Chappels, Prebends, or other Benefices, without parochiall Cure, according to the *Droit de Regale* of the Kings of <sup>i</sup> England and <sup>k</sup> France especially, in some kind it hath remained) and much altered it in Bishopriques and Monasteries. It was in substance forbidden in the eighth Generall <sup>l</sup> Councell of *Constantinople*; then by Decree in the Councell of *Rome* vnder *Gregorie* the seuenth, about M.LXXVIII. in words, which as well shew how the vse of Inuestitures at that time remaind in many places (for some few years before, it appears, they were very common among the Laitie, and scarce taxed by the Clergie) as also what opinion the Church had of them: *Quoniam Inuestituras Ecclesiarum contra Statuta sanctorum Patrum* (that is, against the many Canons made against Lay mens disposition of Church-reuenues) *à Laicis personis in multis partibus cognouimus fieri, & ex*

*h Extr. de Praescript. c. 1. de quarta.*

*i Vide 19. d. 1. in. 2. q. 1. impris. de.*

*k Vide l. Forhanb de primat. Regni Francie, prin. 3. & Ryloff. prax. Beneficiorum, cap. de Reformationibus. & Seruic en 2. Vol. des playdoiers en l'arrest touchant la Chappelle S. Nicholas en l'Eglise S. Erius de Colchi, Diocèse de Noyon, p. 109. & Vol. 1. pag. 298. & Petr. Gregor. in Synagoga iur. uniuers. lib. 17. c. 7. & 8. & Paquier. Recherch. lib. 3. c. 31. & 32. l. A.D. 10. can. 22. A.D. 873.*

eo plurimas perturbationes in Ecclesia imò ruinam sanctæ religionis oriri, ex quibus Christiana religio conculcatur; Decernimus ut nullus Clericorum Inuestituram Episcopatus, vel Abbatie, vel Ecclesiæ de manu Imperatoris vel Regis vel alicuius Laicæ personæ, viri vel feminae, suscipiat. And in the generall<sup>m</sup> Councell of Lateran, held in M.C. X I X. vnder Calixtus the second, chiefly against Inuestitures, one Canon is; *In parochialibus Ecclesijs Presbyteri per Episcopos constituantur, qui eis respondeant de animarum cura, & de ijs quæ ad Episcopum pertinent. Decimas & Ecclesias à Laicis non suscipiant absque consensu & voluntate Episcoporum, Et si aliter presumptum fuerit Canonice ultioni subiaceant.* The like was in the next generall Councell vnder Innocent the second. and very many other Pontificall Decrees<sup>m</sup> were to the same purpose. For by this time, through the vse of giuing of Orders without Titles of Churches (against the old ° Canons) and Resignations into lay hands; euery lay Patron easily could haue a Clerk capable of his Benefice, and so inuest him, without so much as notice of the Bishop. And, notwithstanding those Decrees, both Oecumenicall and Pontificall, that practice of Inuestitures could not presently be taken from the Laitie, although soon after that generall Councell held vnder Innocent the second, in M. C. X X X I X. it began to be lesse frequent, and Institution vpon Presentation here

m Extat in Romana editione, tom. 4. Vti & illud sub Innocent 2. celebratum, & in Vaticana seruantur Mss. iam verò etiam in nupera Bini editione reperiuntur.

a Habentur apud Gratianum dist. 63. & c. 16. q. 7.

o Dist. 70. c. 1.  
& 2.

here and there succeeded it. But not long before that Councell, it was much complained against by the Clergie, and stiled by some of them, *Hæresis inuestiturae*. others of them by no means admitting it to be an Hæresie, but only a vsurpation of the rights of the Church, which should not be disposed of by lay hands. Besides other occurrences of Inuestitures in Epistles, Councils, and Storie of about M. C. you may see especially the Epistle twixt *Iuo* Bishop of *Chartres*, and *Iohn* Archbishop of *Lions*, with others of *Godfrey* Abbot of *Vendosme* (all written about M. C. XXX.) in which it is largely disputed of; and in them it appears plainly, that although the Church would neuer haue permitted it to the Laitie, and did also sometimes extort renuntiatiions of it, yet the Pope often re-granted the right of it in *France* and *Germanie* to such as had renounced it. Whence also *Iuo* concluded, that it was but a ciuill right belonging (by their Canons) to the Church, and no such thing, as of its owne nature, could not be enioyd by the Laitie. But the Canons gaining force, as the Papall power encreased, at length, about the end of this C C C C. yeers, it became wholly out of vse. for not till then was it left off; and that the course of Institutions vpon Presentations was not before commonly practiced (especially in the case of lay Patrons) appears by diuers P Canons relating as much, to which I

M 3

referre

o Vide *Goffrid.*  
*Vindocinens.* lib. 3.  
epist. 11. & *Inuonem*  
*Carnot.* Epist. 335.  
238, & 239.

p *Concil. General.*  
*sub Alex. 3. can. 9.*  
c. 14. *Extr. de iure*  
*Patron. c. 4. 10. 21.*  
*& tit. de Instit. c. 3.*  
*& tit. de Prebendis.*  
c. 31. in *Lateranensi.*

referre you. and more hereof in the English vse. By reason of these Inuestitures ( wherein the Glebe, Tithes, and all Endowments of the Church, as well as the Church it selfe, in point of interest or estate, passed from the Patron, and at euery vacancie were in him as in the only proprietarie of them) when Appropriations in these ancient times were made, it was not only the Church it selfe, or the *Titulus Ecclesie* (for that also, once by consecration created, was given by lay Patrons, when the Clerk had already his Orders) or the patronage, that was directly in point of interest conueyed, but withall the Glebe and Tithe made parochiall by Grant, Foundation, or Custome. And the title of the Church, the Monasterie (according to the Patrons prouision in many Appropriations; and in others, at their pleasure) still gaue afterward by Presentation of a Clerk, whom the Bishop instituted. For the Clergie, except Bishops and such as had Episcopall right by priuiledge, gaue ¶ usually by Presentations; these Inuestitures being altogether against their Canons, and but like the Bishops Collations. Neither did any such thing follow vpon such Presentation as Disappropriation, in regard of the Endowments or Temporalities. for such was the nature of the Appropriations, that the Church remained notwithstanding presentatiue. and the Incumbent, that came in by presentation, had the Church only vnder

q. Ad hanc rem,  
vide s. 16. q. 3.  
x. c. 6.

vnder the name of Vicar, and in anothers right, and receiued the Tithes and the profit of the Glebe, no otherwise then to the vse of the Monasterie, in which the Appropriation had setled them, as Inuestiture should haue done in an Incumbent. Neither was the Title of the Church, and the Endowments, so entire a thing, but that, according to the Patrons interest and will, they might by the Law then in practice be so seuerd. The ordinarie instruments of such Appropriations plainly shew it. And all the maintenance of the Incumbent was at the bountie of the Monasteries allowance. And it is exprest vually in old Instruments of Appropriations, that such a Clerk should answer to the Bishop *de spiritualibus, vobis autem* (to the Monasterie) *de temporalibus*. Which is complaind against in that of Iohn of <sup>r</sup> *Salisburie: Personatus quosdam introduxerunt, quorum iure ad alium onera, ad alium referuntur emolumenta*. Herewith agrees the Generall <sup>r</sup> Councell of *Lateran*, held in the yeer M. C. L X X X. where the ancient course of filling Churches, thus appropriated, to Religious Houses, is commanded to be thenceforth better obserued. *In Ecclesijs suis quæ ad eos pleno iure non pertinent* (that is, those which they held both exempt from Episcopall Iurisdiction, and in them had the right of Institution and Destitution by Priuiledge) *instituendos Presbyteros Episcopis presentent, vt eis quidem de plebis cura re-*  
*st ondeant;*

*r. De Cognit. Ca-*  
*ritatis, lib. 7.*  
*c. 17.*

*f. Ita etiam extra,*  
*tit. de Priuileg. c. 32;*  
*§. in Ecclesijs.*  
*Coneil. Generali.*  
*A. D. 1215. cap. 6.*  
*extr. de Prob. &*  
*sign. c. 11. & Luc.*  
*3. in App. ad Con-*  
*til. Lateran. de an.*  
*D. 1180. tit. de iure*  
*Patronat. cap. 24.*  
*& Roger. Hoveden,*  
*in annal. fol. 460. b.*

*ffondeant; ipsis verò de rebus temporalibus rationem exhibeant competentem.* For how euer by the Canonists of later time, this in the Councell, and in our Appropriations, be vnderstood variously, and, for the most part, of Churches whereof Religious Corporations had only the Patronage, and according to their Law, no proprietie; whence also they interpret that *rationem competentem* for an account only which the Patrons might exact, but not for a denoting of the proprietie or right that the Religious Houses had in the profits; yet doubtlesse in those times, that *suis Ecclesijs* in this and the like Canons had reference to Churches appropriated only, or to such as were possessed by equall right to expresse Appropriation. And although *Innocent* <sup>r</sup> the fourth, being of the ancientest Writers on the Decretals, rather iustifies that more common opinion (whereof you may haue most speciall declaration in our <sup>u</sup> *Lindwood*) yet others, and as great Lawyers of that time, expressly suppose, that the Temporalities are by that passage vnderstood due and payable to the Monasterie, and that not an account only was to be made of the dispensing of them. Expressly <sup>x</sup> *Hostiensis* vpon the difference of their Churches held *pleno iure*, and not *pleno iure*: *Vbi pleno iure non pertinet, tunc habet ibi Monasterium temporalia & representationem Presbyteri Vicarij tantum &c.* Whereas if it were theirs *pleno iure*, they had al-

<sup>r</sup> Vide cum ad tit. de Prob. c. 29 Lateranensi 31. & tit. de Privileg. c. 2. §. in Ecclesijs editione Vener.

<sup>u</sup> Constit. prou. tit. de locato & conuictio, cap. licet bona verb. assertus non ligari.

<sup>x</sup> In summ. tit. de Offic. Ordinarij, c. sunt autem.

so Institution and Destitution to themselves.  
 And y<sup>e</sup> elsewhere likewise he makes the enioying  
 the Temporalities to be denoted by, *Pro rebus  
 Temporalibus debita subiectio*. And so *Durand*  
 (whom they call <sup>z</sup> *Speculator*) in his precedent  
 for the Libell, whereby a Monasterie hauing  
 founded a Church, was to demand the Tempo-  
 ralities, thus proposes the suit, *Cum Ecclesiam il-  
 lam Monasterium à fundatione habuit* (for in those  
 ancienter times the right of Foundation of a  
 Church and Appropriation were as <sup>a</sup> one to  
 Religious Houses) & sic per consequentiam in  
*temporalibus sibi debeat respondere, petit tempora-  
 lia in ipsa Ecclesia sibi adiudicari, &c.* Is it not  
 then plaine, that *respondere in temporalibus* de-  
 notes the taking of the Temporalities to the Mo-  
 nasteries vse? *Hosliensis* and *Durand* are better  
 authoritie to proue how the Law was anciently  
 taken, then a cart-load of the later and more  
 barbarous. Other reasons might be brought to  
 proue this. but I presume no man will doubt it,  
 that knowes how to examine it. I only adde this  
 obseruation, to help cleere it, out of a Bull of  
 Pope *Lucius* the second, to the Prior and Ca-  
 nons of *Kenelworth*, wherein licence <sup>b</sup> is giuen  
 them, to hold their Churches in *proprijs vsus*,  
 that is, in *manu vestra* (as the words are) *retinere  
 & earum Beneficia ad proprios vsus reservare, con-  
 stitutis ibidem Vicarijs & Diocesano Episcopo præ-  
 sentatis, qui eis de spiritualibus, vobis verò de Tem-*

N

poralibus

y *Hosliensis summo.*  
 tit. de capellu Mo-  
 nach §. quid iura,  
 & vide tit. de  
 Priuileg. §. quid  
 oportet.  
 z *Specul.* tit. de ca-  
 pellu Monach. §. 3.

a Vide *Hosliens.*  
*summo. cond. tit. §.*  
*quid sit.*

b *Mss. Repertur*  
*in Vol. quo com-*  
*pingitur Fridericus*  
*poeta in Biblioth.*  
*Cottian.*



poralibus omnibus, videlicet Decimis & Obuentio-  
nibus debeant respondere, dum modo Vicarijs & cæ-  
teris Ministris earundem Ecclesiarum in necessarijs  
prouideatis, &c. What can be plainer, then that  
the phrase of *respondere* in the Canons is here as  
it were purposely declared, as we haue conceiud  
it, according to Antiquitie? And sometimes al-  
so Appropriations were made by Lay men, re-  
seruing to themselues a *iur patronatus*, and *iur  
presentandi*. But all the profits of receiud Tithes  
and Glebe were theirs, who so had the Appro-  
priations, and were dispensed at their pleasure;  
and to the Curats, in both kinds, as they thought  
fit, were some Salaries giuen. which turnd after-  
wards oft time into Vicarages that belong to  
such Appropriations; whence also it came, that  
their Presentations haue been since and are now  
taken to be only to those Vicarages, being made  
perpetuall; whereas indeed, their Vicars were  
originally presented to the whole Rectorie, but  
had the benefit no otherwise then is before de-  
clared. The words of conueyance in Appro-  
priating commonly were, *Dedi & confirmaui  
Ecclesiam de N. cum decimis*, or *cum Decima-  
tione*, &c. Whereby the Church Glebe and  
Tithes passed equally, by way of interest, to the  
Monasterie. So anciently, and at this day, manie  
Couents, but especially the *Præmonstratenses*,  
haue diuers Churches continually in their  
owne hands. And some of the Monks receiud  
into

c. *Amedeus Co-  
met Sabaudie in  
Chart. Monast.  
Cluniac. An. D.  
1035. dicitur extat. in  
Biblioth. Cluniac.  
pag. 413.*

into Orders, discharged the Cure. And in such Instruments (of the elder Times) as more commonly ordayned, that they should keep the Church presentatiue, the Church it selfe passed also it seems as well in right of propertie, as of patronage; which sometimes also (as is before noted) was excepted to the grantor. Examples enough are extant, wherein all this is apparant. For that more generall way of appropriating Tithes (the Church still remaining presentable, which specially is pertinent hither) you may see the Grants and Bulls made to the Abbey <sup>d</sup> of *Clugny*, to the Abbey of <sup>e</sup> *S. Germans* in *Auxerres*, and many other like recited in Pope *Innocent* the third his Decretals, as also the Charter of *Henry* Earle of <sup>f</sup> *Brabant* to his Abbey of *Afflighem*, neere *Bruxels*; of *Thierry* Earle of *Holland* <sup>g</sup> to the Abbey of *Egmond*; which, being but a few of a multitude, enough shew the vse of the time in conueying Tithes in Appropriations seuerally, and as distinct from the Church; and more are of this nature, where we speake of the English vse. And although also, Confirmations and Bulls of Popes and Bishops are sometimes added to such ancient Appropriations (as you see in an ancient <sup>h</sup> Charter, by *Lewis* the fourth, of *France*, in the yeere DCCCCXXXIX. to the Abbey of *Clugny*, where the Appropriations of Churches and Tithes, *Sicut per priuilegium Romanum*, & per

d Biblioth. Clu-  
niac. p. 1430. 1434.  
e Innocent. 3. in  
Epist. rom. 2. p. 433.  
alibi sap. & vide  
si placet, Chertum  
Abbat Verregiac,  
apud Andream  
Quercetian in No-  
tu ad Biblioth.  
Cluniac. pag. 133.  
f Apud Aubertum  
Miraeum in Orig.  
Cenob. cap. 43.  
ubi & B. fida  
diploma conuolus.  
g Apud l. Dou-  
gem, Annal. Hol-  
l. 10.

h Biblioth. Clu-  
niac. pag. 103.

*Scripta Episcoporum adquisierunt*, are confirmed ; and in other Monuments of succeeding Times) yet those were gotten by the Monks, to satisfie the Canons ; not to giue validitie in secular or common Law, then practiced. But also some Instruments of Appropriations are , wherein, from Bishops only, Tithes of other mens Lands were conueyed to Monasteries ; as in that especially of *Atbelbero*, Bishop of *Hamborough*, in the yeere M C X L I. <sup>i</sup> whereby he giues to the New Minster in *Wipenthorp*, then newly founded by *Vicelin*, in the Territorie of *Holst*, *eiusdem Villa Decimam cum aliarum quarundum Villarum subter positarum Decimis, veluti in villa Staueræ, Horgan, Brachtenuelde, Tuenthorp, Godeland, Wlmersthorp, Boienbutle, Husberg, Cumerueld, Padenworth, Withorp, Padenstede, Bulligstede, sed & alias Decimas iuxta flumini Gestere in utroque littore à villa Elmesborne vsque ad lacum Wicstet, &c.* with diuers other. And by another Charter, dated M C X L V I. he giues to the same Monasterie other Tithes of great value ; and some of his successors <sup>k</sup> follow his example. If you question how the Bishop came to haue power to make these Grants, eyther in regard of Parochiall Curats by the Canon Law, or of the Lay owners interest, according to the practice of the Time ; know , that in this and most of the Bishopriques of *Germanie* especially (which began with the Christianitie of the Dioceses,

<sup>i</sup> In App. ad Hist. Brem. pag. 114. & 119.

<sup>k</sup> *Baldaric, Arch. Hamburg. An. D. 2274.*

ceses, about, or since the beginning of the *French Empire*) the right of Tithes, through those Dioceses, was challenged by the Bishops onely ( and that iustly enough by the Lawes of the Empire, which presently are related ) because the Parishes being not limited, nor indeed Christianitie so at first settled, that they could haue been well assigned to Parochiall Curats, the Bishops were the true and immediat Parochiall and ministring Rectors in their Bishopriques. and although afterward, Parish Churches were founded, yet to them they would not resigne their ancient right in Tithes, which from their first Function there, they had eyther enioyed, or still pretended to, both in regard of the value of them, as also because euery founded Church was to be otherwise endowed with Manse and Glebe. Neither had it beene altogether safe among so obstinate a people ( which could scarce by any means be brought to pay any Tenths ) to haue permitted euery Parish Rector afterward to haue demaunded them, or taught them due to himselfe. for to such as had both at once receiued the Doctrine of the Faith, and the declaration of the right of Tithes due to the Ministers (which were only, when they receiued it, the Bishops; if you respect only, as you must, the Ministers settled among them) it might haue seemd a different Doctrine, to haue afterward taught them due to any inferior part of the

l Lambert. Schaff-  
naburg. pag. 187.  
m Krantz. Waw-  
dal. lib. 4. c. 38. &  
39.  
n Vide Greg. 7.  
Reest. lib. 2.  
epist. 77.

Hierarchie ; especially in the weaker yeeres of that Church. Hence is it, that the Archbishop of <sup>l</sup> *Mentz*, claimed all the Tithes in *Turingia*, the Bishop of <sup>m</sup> *Lubek*, of <sup>n</sup> *Salzburg*, and others, the Tithes of their Dioceses. and hence only those of *Hamborough* so liberally dispose of them. Neither could any of these reasons so well haue place in other Countries. for (except in *Germanie*, and those more Northerne parts) Christianitie was in most places of *Europe*, it seems, so established, and the Hierarchie of Bishops and parochiall Rectors so settled, before any common Doctrine or generall Law, for payment of Tithes, was so diuulged (for a thing of necessarie obseruation) in the Church, that when it came after to be commaunded, it could not be, in any conceit, better ordered, then according to the diuision of limited Parishes. and, those wanting at the time when the Faith, and the Doctrine and Laws of Tithes, came first into those parts, how could it (on the other side) fall out, but that they should be taught due only to the Bishopriques? Which opinion also, it is no wonder, that those Bishops should be willing to preserve and continue, after Parishes were there diuided, and after Tithes came at length to be paid them. For long they preached, and much stirre was about it, before they could get a vsuall payment of them. Neither need you mistrust, that their right to Tithes, so cleerely pretended

pretended in these Appropriations by the Bishops of *Hamborough*, was onely from the Episcopall right which the Canonists allow, ° in case where the Lands, wherein the Tithes encrease, are not assigned to any one Parish Church. the contrarie thereof appears enough in other conveyances made to the same Monasterie; in which the same Bishop *Atbelbero*, first in MCXLI. appropriats to it the Parish Church of *Bisborst* vpon *Albis*, *cum banno simul & cum omnibus appendicijs eius acquisitis, vel acquirendis*, and with the largest bountie, that the thing giuen might carrie with it. but afterward, in MCXLVI. hee graunts to it also a good part of the Tithes within the Banne and precinct assigned to the same Church; which plainely shewes, that he graunted Tithes of Lands, alreadie assigned to parishes. For his parish Churches and their profits were no other, then what Foundations, speciall Endowments, and the Offerings of the parishioners, within their Banne or Limits, had made them. Which is well iustified by an old Rimer, that in Verse, which would grieue *Apollo's* heart to heare, sings *Atbelbero's* liberalitie to the Monasterie, and expressees the Tithes of foureteen Villages, and other places giuen by him, and then comes to two Churches (that he afterward appropriated to it) *Bisborst* and *Leborst*, and names them only as they had Bannes or Limits and parishioners; as

o Extr. de Diet.  
c. 11. quoniam.

Bisborst

Bishorst *cum Bannis*, *Bannos cum parochianis*  
 Ichorst *cum Bannis*, *Bannos cum parochianis*.

And then addes,

*Et Bishorstenſis Decimatio tota paludis*  
*Additur & quæque fratrum labor occupat æquè.*

Where you ſee, hee diligently remembers alſo an Exemption giuen to it by that Biſhop: which could hardly haue been, if the generall right of Tithes had not beene ſuppoſed in him. But out of theſe things you may probably collect, that by this time (that is diuers yeeres before the end of theſe C C C C. yeeres) in ſome of thoſe Northern Churches, Tenths were payd more iuſtly, according to the deſire of the Clergie, then in other places; where you ſhal find arbitrarie conſecrations by Lay men, continuing till about M C C. For if the Biſhop had not had theſe Tithes payd, but had pretended only right in them, his bountie to the Monafterie had been to little purpoſe. So in the Dioceſe of *Oldenburg*, about M C L X. payment was duely, it ſeems, made to the Biſhop by all, ſauing thoſe which had improued the deſerts of *Wagria*, which could by no means be brought to it. *Decimas ex more & ſoluere recuſauerunt*, ſayes *Krantzius*; being yet readie to giue a competent part of their encrease. And although *Gerold* the Biſhop and Count *Adolph* ioyned together; the one with perſwaſion (wherein he pretended



tended to them *Exempla*, as the same Author writes, *Ecclesiarum omnium & præsertim proximarum*, and told them of *Diunum de Decimis præceptum*: the other with power, to make them tithe their profits; yet they vtterly refused, and with tumult and clamors made open profession, *Seruili conditioni nunquam se colla submissuros, per quam omne Chrificolarum genus Pontificum pressurâ laboret*. Neither were the Danes in those Ages easier to be brought to the payment of Tithes to the Church. Indeed they so much abhorred it, that no greater cause was, why they barbarously betrayed and murdered their King *Knout* : the fourth, then that hee would haue imposed it. And about the yeere M C L X X X. vnder King *Waldemar* the first, *Absalon* Bishop of *Lunden* would haue had them all paid their Tithes, and that vnder paine of an Interdict to continue against them: but they stoutly refused, and answered by publique message to the Clergie, That notwithstanding the Interdict, they should carefully minister Diuine Seruice and Sacraments, or els depart the Countrey: if they did neither, *Non solum rerum amissionem sed membrorum etiam truncationem demorarentur*. And it is well noted by *Krantzius*, that the Northern Nations generally, were very hardly brought to pay. but after continuall and earnest Doctrine of the Church, and command of Princes, at length many of them yeelded; that is, as

r. *Ad. D.* 1078.  
*Krantz. Dama* 4.  
*cap. 37. & in pref.*  
*ad Hist. Regni*  
*Normag. & Dan.*  
*lib. 6. cap. 50.*

may be coniectured, in the first halfe of the yeer M C C. Through the frequent vse of those *arbitrarie Consecrations*, and those *Appropriations*, Churches with their Tithes, and Tithes of feuerall possessions, were in exceeding number established in Monasteries, as well of Nunnes as Monkes. The Tithes of L X. of L X X X. or more Parishes, were by those courses, annext sometime to one Monasterie; which the Head and Couent possessed, not as any part, or as pretending themselues to be any part of that Clergie which made vp the Euangelicall Priesthood, or deserued them by ministring Diuine Seruice and Sacraments to the owners. For indeed, diuers of these appropriated Tithes were out of such lands as lay so distant from the Monasteries, not in other Diocesess only, but also in other Kingdomes, that the owners neuer saw or knew the Monks, or their Cloister, nor otherwise heard of them, but by their Cellarars or Prouoosts that exacted payment. Whereupon it was in time of our *Edward* the third affirmed in a petition in Parliament, That Aliens (which by reason of appropriations made to their Houses beyond the Seas, or to their Priories or Cells in this Kingdome, or the like) did so deuoure the Salaries due to Parish Curats, and so neglect the Diuine Seruice which they should haue taken care for in euery Parish, that they did more hurt to holy Church, then all the *Iewes* and Sa-

*racens*

*racens* of the world. Which might haue been well applicable to some kind of Non-residence of Denizens also. But the religious persons iustified their consuming this Ecclesiastique reuenue by reason only of their Prayers, their Tears, their Psalmes, their Almes, and the like exercises of Deuotion; beside their maintenance of Curats with arbitrarie Salaries, in the Parish-Churches appropriated to them. Which is at large seene in an Epistle of *Peter* Abbot of *Clugny* to *S. Bernard* Abbot of the *Cistercian* Order at *Clareuaulx*, about the Monks of *Clugny* their possessing of a large number of Parochiall Tithes. The *Cistercians* had made diuers complaints against them, and one was vpon this verie point, in these words: *Ecclesiarum & Parochialium, primitiarum & Decimarum possessiones quæ ratio vobis contulit? Cum hæc omnia non ad Monachos, sed ad Clericos, Canonica Sanctione, pertineant; illis quippe quorum officij est baptizare & prædicare & reliqua quæ ad animarum pertinent salutem gerere, hæc concessa sunt, vt non sit eis necesse implicari secularibus negotijs; sed quia in Ecclesia laborant in Ecclesia viuunt.* Hereto, among diuers other imputations, the Abbot of *Clugny* answers, and giues his reason for their enioying of Tithes, thus: *Quia Monachi ex maxima parte fidelium salutem inuigilant, licet Sacramenta minimè ministrant, estimamus ipsorum primitias, Decimas & Oblationes, & quæque beneficia*

*¶ Petr. Cluniac.  
lib. 1. epist. 8. circ.  
An. D. 1150. Vide,  
si placet, Joann.  
Saracbar, de Nugis  
Curialium, lib. 7.  
cap. 31.*

*eos digne posse suscipere, quoniam & reliqua populo Christiano à Presbyteris* (that is, by the Curats which they maintaind) *faciunt exhiberi.* And another of great note before this Abbots time, pretends speciall charitie towards the poor, for sufficient reason why Monasteries and Hermitages had Tithes giuen them: *Vt copiosiora* (saith he) *alimenta proficiant, dantur in Monasterijs & Eremis Decimæ quorunque prouentuum, & non modo pecorum sed & uernicium pariter & ouorum.* The same reasons hold in iustifying of Appropriations to Nunneries, where the persons are not capable of the Ministerie. And among Examples of the Age, take this one for some confirmation, in these elder times, of the right which Monks pretended to them. In the yeere M L I X. a great<sup>r</sup> controuersie fell between *Meginber* Abbot of *Herfeldt*, and *Burchard* Bishop of *Halberstadt*; about Tithes of large Territories in *Saxonie*, appropriated to the Abbey. The Abbot stood vpon the Appropriation; the Bishop vpon his Episcopall right, which by the Canon Law is, and anciently was, the same with parochiall, in places not limited to any certain Parishes. The Bishops greatness with the Iudges of both Lawes, made the Abbot so despaire of successe in the Suit, that he prosecuted no further; but withall, summoned the Bishop to appeare before the Almightye in his Iudgement-seat, within some few daies there

† *Petr. Damian.*  
*lib. 2. epist. 14.*

u *ὀρνίθων, i.*  
*auium seu Gallinorum.*

x *Lambert. Schaff-*  
*naburg. in Annot.*  
*pag. 466. edit. r-*  
*gentorat. Videtis*  
*etiam Francisca*  
*Monaldi consilium*  
*de iure Abbatis S.*  
*Mariae i Carceribus*  
*in Diocesi Patavi-*  
*na apud Ioh. Bap-*  
*tist. Casar. part. 1.*  
*consil. 46.*

there to answer in the same Action; and verie soon after departed this life. Not many daies interceded, but the Bishop riding towards the Court where this Suit had depended, to dispatch some proceedings touching it, suddainly fell from his Horse very sick; and being carried into his Inne, gaue most strict charge (as one diuinely moued) that the Abbey should haue restitution and quiet possession of those Tithes for euer; and admonisht them all, that were by, That who euer had been parties with him in that oppression against the Abbey, should by the like Iudgement from Heauen, suffer as he did; confessing to the two Bishops of *Magdeburg* and *Hildenesheim* (then visiting him) that he was now called, according to the Abbots summons, to answer his exaction of the appropriated Tithes, before the Iudgement Seat of the Almighty: and soon after, hee most miserably died; Vnto his Arch-priest, who had been his great Instrument in the Suit, the same yeere suddainly following him. But how euer either the vsuall practice, or this example wrought; a yeer or two after, this questioning of Tithes vpon Episcopall right (that is, vpon pretence that all Tithes of euery Diocese were due to the Bishop, as to the Rector of a great Parish; for such a right was most specially pretended by Bishops in *Germanie*, as is already declared, and that both against Appropriations & arbitrarie Con-

secrations) bred most perillous disturbances of State, and of no small consequent in those parts. For in the yeere M L X I I. when *Otho* succeeded his brother *William* in the Marquisat of *Turingia*, *Sigisfrid* Archbishop of *Mentz*, denied him the relieuing of his Fiefs held of the Archbishoprique, vnlesse hee would giue him all the Tenth of his Demesnes, and compell all the Tenants of his Marquisat to doe the like. This was exceedingly distastd by the *Turingians*, in-  
somuch, that they openly profest, they would sooner lose their liues, *quam patrum suorum legitima amittere*; that is, then part with their ancestrell right of detaining, or disposition of Tithes, according to their vse, either of Infeodations or Appropriations. so you must of necessitie vnderstand it; and other passages in the Author (*Lambert of Schaffnaburg*, then liuing, who relates it) make that sense of it plaine. Neither was this *Otho*, for as much as in him lay, wanting to the Archbishops request. But in the yeere M L X V I I. vpon his death, hee left ioy enough to his countrey men, in regard of that his yeelding about the Tenth, which none of his ancestors had giuen example of. but in him it was the chiefe Seminarie, as the Monke sayes, of the many calamities suffered in the *Saxon* Warre of that time. Great disputation of Canonists followed some six yeeres after, in a Councell held, about this Episcopall right, in  
Er.

Chap. 6.

III

*Erpesfurt*, where not only the Tithes of Lay men were called y in question, but Tithes appropriated to the Abbeyes of *Fulda* and *Herfeldt*, and of all their possessions, were challenged by the Archbishop; his Canonists vehemently disputing for him; and the Emperor *Henry* the fourth, who much invaded the rights of the Church, vrging him forward, that indeed hee might haue had a moitie with him. At length, the Abbots diuided with the Bishop by a special transaction; and, when they yeilded, the Lay men, seruing the time, agreed to giue him theirs also. But presently the exaction of them ceased. *Hoc anno (MLXXIII.) post exortum bellum Saxonicum* (sayes the Monke) *nulla deinceps exactio facta est Decimarum in Turingia*; gaudentibus *Turingis quod occasionem inuenissent, vt traditas sibi à patribus leges manu militari tuerentur*. And although the Archbishop againe questiond it, no successe followed. Of Appropriations of Tithes, hitherto.

I V. The vse of *Infeodations*, or Conueyances of the perpetuall right of Tithes into Lay hands, is rememberd by *Peeter Damian*, that complaind of it to Pope *Alexander* the second, about the yeer *MLX*. *Insuper etiam & Decime* (saith z he) *ac plebes adduntur in Beneficium secularibus*. Where *plebes* is taken for Parish Churches, as it is often vsed in the old Canons: and theyare the same, to this purpose, with parochial Tithes

y Vide Schaff-  
naburg. pag. 487.

z *P. r. Damian.*  
*lib. 1. epist. 10. &*  
*lib. 4. epist. 12.*



Tithes and Temporalities ; although literally, they interpret only *laici*, that is, the *Lay people of the Parish*, or *those of whom the Cure is* ; which word is often for *plebes* in the Greek Canons of the *African Church*. The Originall of the practice of these Infeodations of Tithes appears not in old moniments. Those which referre them to the time of *Charles Martell*, or <sup>a</sup> any age neer him, are in grosse error ; neither is any mention of them, for the space of about CCC. yeeres after him. Lands and Monasteries consecrated, were <sup>b</sup> about those times of *Martell* often possesst by the Laitie, and often wrongfully, as the storie of him, *Carloman*, and their successors, plentifully discouer. and thereof enough in the former Chapter. But no Tithes in those times were Infeodated, as also is iudiciously obserued and taught by the learned *Stephen c Pasquier*, Aduocat Generall *en la chambre des Comptes*, whose diligence yet failes, when he confidently deliuers, that these Infeodations began about the time of the holy Warres that were between MXC. and MC. The contrarie appeares plainly, not only in that of *Peeter Damian*, who liued long before, but also in the Councell of *Lateran*, held in MLXXVIII. where this Canon is, *Decimas quas in vsum pietatis concessas esse Canonica autoritas demonstrat, à Laicis possideri Apostolicà autoritate prohibemus. siue enim ab Episcopis vel Regibus, vel quibuscumque*

<sup>a</sup> Vide *Kyantz*, *Metropol. lib. 2. c. 2.* Vbi ad morem Mandrabuli, coniecturas de hac re infeliciter adfert.

<sup>b</sup> Vide, cum his quæ supra adnotauimus, *Flodoard. hist. Rhemenf. Eccles. lib. 2. cap. 12.* etiam in Ecclesia Orientali Monasterijs & locis alijs sacris Laici sepe vsi frui sunt, constat in *ἱστορίαις*.

*Guill. Alexij Patriarchæ Constantinop. edit. in comment. Zonaræ, & in Canon. 13. Synod. Occumenica 7.*

<sup>c</sup> En les recherches de la France, tom. 3. chap. 35.

*quibuslibet personis eas acceperint, nisi Ecclesie reddiderint, sciant se sacrilegij crimen incurrere:*

Which in the same syllables is iterated in the generall Councell of *Lateran*, held in M. C. XXXIX. vnder *Innocent* the second. But in the first you see cleerly, that Infeudations of Tithes were ancients then the Holy Warres: Which is plainely confirmed also by the Councell of *Cleremont*, held in M X C V. by *Urban* the second; where it was forbidden, That Lay men should thenceforth *Altaria vel Ecclesias sibi retinere*, that is, keep Churches and consecrated Tithes in their owne hands. for so was the common <sup>d</sup> signification of *Altaria* at that time in *France*. And obserue there withall, that they had beene practiced not alone by Lay men, but by Bishops also; as is declared in *Peeter Damians* <sup>e</sup> complaint against them for it. Likewise it seems, Religious Orders made Fiefs or Tenements of Tithes <sup>f</sup> for Lay men. Testimonie of these Infeudations are very frequent in the Canon Law, which commonly stiles the Tithes so conueyed into Lay hands, *Decimæ Laicis in feudum concessæ*, and *Feudales*, and *Infeudatæ*, that is, Feudall Tithes, or as the *French* Lawyers call them, *Dixmes infeodees*. And to this day, these Infeudations remaine; especially in *France* and *Spaine*, and also elsewhere. Neither are the Tithes so posselt, other then meere Lay possessions, and determinable before the secular Iudge.

P

But

d C. 1. q. 3. c. 4.  
quæstium.

e Lib. 4. Epist. 12.

f 6. Decretal. tit.  
de Dec. c. 3. §. 1. ant.

But thereof, more in the practice of the next CCCC. yeeres, in which the ancient Infeodations haue continued. But since the yeere M.C. LXXX. none could, in *France* especially, be newly created; that is, no Lay man might thenceforth begin Infeodations of Tithes parochially due by the Canons. So was it ordained in the generall Councell of *Lateran* then held, in these words: *Prohibemus & ne Laici Decimas cum animarum suarum periculo detinentes in alios Laicos possint aliquo modo transferre. Si quis verò receperit & Ecclesie non reddiderit, Christianâ sepulturâ priuetur.* So hath the continuall practice (which in such a case is the best interpreter) since been in that Countrey, which hath receiued this Canon for a binding Law. Neither is it <sup>b</sup> otherwise to be vnderstood; how euer diuers of the later Canonists, with ignorance enough, draw it to a different sense, and oppose it against the right of all feudall Tithes, being ancients then the Councell, and since passed ouer into Lay hands. And whereas they commonly suppose, that all these ancient feudall Tithes were at first spirituall, and transferred from Church-men (at the request of Princes) into Lay hands, and since wrongfully detained; surely it is an error. neither is there any ancient warrant sufficient for it: many of them were doubtlesse created by Lay mens Grants, as Rents-charge, Estouers, Turbaries, and the like are. Who can doubt of it, that

g. *Exw. tit de Dec.*  
c. 19. *prohibemus,*

h. *Neque aliter  
sanè intelligunt  
vetustiores illi  
iuris interpretes  
Innocentius, q. Ho-*  
*stiensis, Bernardus.*  
*& vide Henricum*  
*Boulie ad tit. de*  
*Dec. c. quatuor,*

that obserues but alone this Canon *Prohibemus?* Whence also may be strongly inferd, that the greater number of Infeudations were through Grants made by Lay men to Lay men, as Consecrations were, at their pleasure, made to Churches. for what is there only forbidden by the Councell, may be thought the greatest and most preiudiciall practice of the time against the profit of the Clergie. Neither is any prouision there made against the other kind of Infeudations, which passe Tithes from Church-men. And although the words & *Ecclesie non reddiderit*, in the Canon (and in the bodie of the same Councell, in *Roger of Houeden*) seeme to suppose, as if it had been made for such Tithes as had been taken from the Church; yet indeed, the truer reading is *tradiderit*, as appears in the bodie of that Councell first fully publisht out of the *Vatican*, in the last Tome of the Generall Councells printed at *Rome* by command of the present Pope *Paul* the fift; wherewith agrees other Editions, but of lesse authoritie. And perhaps also some old Infeudations were made by Lay Patrons in the vacancie of their Churches, by the same challenged right as they alone made Appropriations. For, as by our common Law, the Patron and the Bishop may in the time of vacancie dispose of the Endowments (as by the Canon Law also, if the Chapters consent, or the Popes, be had;) so in those elder times, vpon

equall reason, when the Patron had the only disposition and interest of the Church (as is already shewd) he alone sometimes granted any part, at his choise; it seems, to Lay or Clergie men. Why not any part as well as all? And that Patrons granted whole Churches into Lay hands, appears by diuers passages in *Flodoards* Rhemish historie, by that before cited out of *Damian*, and by the generall Councell of *Lateran*, vnder *Innocent* the second; where it is ordained, that they should be restored from the Laymen to the disposition of the Bishops. And an example is extant among the Records of the <sup>i</sup> Monasterie of *Egmond* in *Holland*; wherein *Charles* King of *France* (who is commonly therein taken for *Charles* the *Bald*; but *Douza* thinks it to be rather *Charles* the *Simple*, and made about D. CCCC. and is thereto perswaded by Synchronisme, the best triall of such truths) recites, that *Hagano*, one of his Nobles, humbly requested of him for *Thierry* (the first Earle of *Holland*) *quasdam res; Ecclesiam videlicet Hecmunde, cum omnibus ad eam iure pertinentibus a loco qui dicitur Zwtherdes Haghe vsque ad Fortrapa & Kinnem, &c.* Which by patent hee grants him in fee, & *vt liberè hæc omnia teneat atque possideat, habeatque de his potestatem iuxta libitum suum ordinandi seu faciendi.* If the Church it selfe of *Egmond* (the Parish Church; for it was then no Abbey, but afterward made

<sup>i</sup> Apud Ian. Dou-  
za, in *Annal.*  
*Holland.* lib. 5.

one by that *Thierry*) passed not by this patent into Lay hands, I sufficiently vnderstand it not. neither is it spoken of, but as what might, according to the vse of that time, be cleerly made a Lay fee. Through these kind of Grants, practised both by Lay & Clergie men, Princes, and priuat persons, the ancient Infeodations of Tithes had their originall, as well as by Leases from the Church; and not by imposition of Tenths by Princes, as some <sup>k</sup> haue ignorantly coniectured; although also it be certaine, that Princes sometimes ioyned <sup>l</sup> with the Bishops to bring in the payment of Tithes, that thereby themselues might haue beneficiall Infeodations of them from the Church. But as Princes made Infeodations out of their owne Demesnes, or their owne Churches; so other priuat Lay persons. And the Clergie, sometimes of Tithes alreadie vested in them; and sometimes, it seems, out of their Demesnes. And perhaps especially religious persons, exempted from payment by Bulls, made some out of their owne Demesnes, as may be coniectured out of a Decree <sup>m</sup> of Pope *Alexander* the fourth, that speaks particularly of Infeodations made *à religiosis exemptis & alijs*. And for examples of Tithes alreadie possessed, and thus granted by the Church, you may specially see that of *Engelbert* Count of *Goritz*, who had an Infeodation <sup>n</sup> anciently from the Church of *Trieste*, in the Patriarchat of *Aquilegia*.

<sup>k</sup> Videlicet *Kranz*,  
*Metropol. lib. 1. c. 3.*

<sup>l</sup> *Schaffsburg*.  
*As. D. 1073. &*  
*Kranz lib. 4.*  
*It'andalie, cap. 17.*

<sup>m</sup> 6. lib. 12. de  
Dec. c. 3. *font.*

<sup>n</sup> *Innocent. 3.*  
*epi. 2. lib. 2. p. 447.*  
& vide ib. p. 482.  
Edit. Colonienfi.

7 Krantz, Wag-  
galia, lib. 4.  
cap. 38. & 39.

p Append. ad li. 3.  
Bremens. fo. 31.

q Vide extr. de  
Dec. c. 17.

r Mandatia lib. 4.  
cap. 38.

s Ms. lib. 3. de con-  
tempus mundi in  
Biblioth. Cot. on.

*legia.* and *Henric Count of Ratzenbourg* had an Infeodation of all the Tithes which were paid to the Church in his Territorie, from the Bishop of *Oldenbourg*. so one *Hildeward* had one in the p Diocese of *Hamborough*, and surrenderd it to *Baldwin* Archbishop there, about M. C. LXXIV. But examples of them were q very many, the dislike whereof was one speciall cause, pretended by those of the Deserts of *Wagria* in *Holst*, about M. C. LXX. why they would pay no Tithes. *Præterea* (sayes r *Krantzius*) & hoc adiecerunt, non multum a veritate aberrantes, quod omnes pene Decimæ in luxus cesserint hominum secularium. To these testimonies, of Lay mens arbitrarie detaining, disposing, or receiuing of Tithes in those elder ages, you may adde r *Bernardus Morlensis* (an English Monke of *Clugny*, about King *Stephen*) his complaint of non-payment to the Clergie. thus speaks he in his affected forme of Verses.

*Rusticus bordea, mittit in borrea, farra recondit.  
Horrea grandia, vasa capacia multaque condit.  
Nec pecus aut sata dante Deo data vult Decimare.  
Nec sacra portio, nec Decimatio redditur aræ*

V. The like libertie as Lay men had enioied (in not subiecting themselues to the payment of Tithes, according to the Laws of the Church, but bestowing or retaining them at their own wills



wills in most places, euen from the beginning of Christianitie, vntill about the yeer M.CC.) was another way purchased, for some time, by religious houses, so to discharge themselues of censure of the Canons, and that by *Exemptions* or *Papall priuilege*. For howeuer the Laitie iustified themselues by their secular right, admitting of Canons that toucht their estates, but as they saw cause in their own iudgments; yet Religious persons, who were alwayes of the Pontificiall side, and reckond in the Catalogue of the Clergie, and possessed diuers large Territories, durst not so oppose what was ordaind either by decree at *Rome*, or in Synods Generall or Prouinciall. Therefore when from the beginning of this Age, both Doctrine and Canons (of which more presently) had made the dutie of Tithes of a known right among the Clergie; Clergie men became somewhat strict obseruers of the payment, as you see plainly in that before cited out of *Godfrey* Abbot of *Vendosme*, with whom *Peeter* Abbot of *Clugny* agrees. And, although <sup>a</sup> Canons be in *Burchard*, *Iuo*, and *Gratian*, referd to, I know not what ancient Councell of *Chalons* or *Mentz*, whereby Lands, occupied by Bishops or Abbots, seem to be discharged; according to which also, another Decree is found in the *Vatican*, annext to some Councils of Pope *Vrban* the second, yet it seems by the autoritie of those Abbots and other testimonie, that

<sup>a</sup> *Videsse* c. 16. q.  
1. c. 46 & notas  
aduersi *Gregoriana*  
adiectas.

that they were not practised as Church Laws. But what some of the Clergie durst not do for the Canons, they had licence for by Exemptions from the Pope. And, beside those other Canons; from <sup>b</sup> *Paschal* the second, about M. C. there was granted to all religious persons, a speciall discharge from Tithes. but it seems also that this Exemption soon took not force in execution. for it was made diuers yeers before those two Abbots wrote, and (if I vnderstand them) expressly affirmd the common practice of the contrarie. And in an instrument of composition twixt the *Templars* <sup>c</sup> and *Præmonstratenses* in the yeer M. C. XLII. one speciall article was, that, *Nullus in vtroque ordine, alter ab altero, tam de nutrimentis, quam de laboribus Decimas exiget vel accipiet.* whence some inference might be that no cleer exemption preceded (at least in force and practice) for both. But howeuer, afterward about M. C. L. most of all the religious Orders were <sup>d</sup> exempted, by Pontificall priuilege, from payment out of possessions kept in their own occupation, which Pope *Hadrian* the fourth (about that time) restrained to the *Cisterciens*, *Templars*, and *Hospitalars*, and decreed that all other religious Orders should pay Tithe of whatsoeuer increase they had in their own occupation, sauing of <sup>e</sup> new Improvements by culture, of pasture for their Cattell and of Garden fruits. But neither were they

<sup>b</sup> Extr. tir. de dec.  
c. nouum genus, &  
App. Concil. Lateran.  
part. 13. cap. 16

<sup>c</sup> Chron. Ord.  
Præmonstrat.

<sup>d</sup> Extr. de dec. c. 10  
ex parte, vide  
Ioann. Sarisburiens.  
de Nug. Curialium  
lib. 7. cap. 31. &  
Append. ad Concil.  
Lateran. part. 13.  
cap. 3. & 10. &  
part. 41. cap. 40

<sup>e</sup> Videlicet Alex.  
a. 106. de dec. c. 2.  
Ramus. & Innocent.  
3. tom. 2. p. 410.  
Edit. Colonienſi.

they by these exemptions, freed from payment of Tithes, which were taught due only by common right to the Church. They were discharged also from such as had formerly been <sup>f</sup> consecrated out of their possessions, by their Founders or Benefactors, to other Churches, ouer which also the Pope challenged supreme autoritie in disposition of their Reuenues. But the Laytie would not permit such exemptions to extend to their Infeodations. *Milites Galliarum*, sayes *Peeter of Blois*, speaking of the *Cistercians*, *sibi ius Decimationis vsurpant, nec vestris priuilegijs deferentes, eas à vobis potenter extorquent*. But, that of those three Orders, was afterward in the year M. CC. XV. in the generall Councell of *Lateran*, limited to such Lands as they <sup>g</sup> had before that Councell purchased. where obserue by the way, that Exemptions were then chiefly allowd to two Orders, which are not properly to be reckond amongst any part of the Clergie, or Ecclesiastique persons. For the *Templars* and *Hospitalars* were deuout Souldiers only, neither could <sup>h</sup> they iustifie their enioying of tithes, either through exemption from the Pope or consecrations from the Laytie, by the reasons which other Cloister Monks vsed. Their prayers, or deuotions in priuat, were not the seruices expected from them in the Church; but their swords and valour only gaue the desert, as at this day may be truly affirmed of the *Hospitalars*

<sup>f</sup> Petr. Blesens.  
Epist. 80. apud  
Boetium in Decret.  
Eccles. Galliarum  
lib. 6. cap. 19.

<sup>g</sup> Extr. di. dec. c.  
34. Nuper Abbates.

<sup>h</sup> Videfis Iacobum,  
Scribur. de Regulis  
Curialium lib. 7.  
cap. 11.

or Knights of *St. Iohns of Hierusalem*, which being now, as in those ancient times they were, only Souldiers of the Church, haue therefore been diuers times lately<sup>i</sup> adiudged in the Court of *Aides* in *Paris* to be no part of the Clergie. But also, by the succeeding Popes, other like priuileges were granted to<sup>k</sup> Bishops, Abbots, and at their pleasure. But of the Practice of these CCCC. yeers, thus much.

VI. Of the *Opinions* left in the moniments of the Clergy, both touching the Right of tithes, and those Practices, next briefly. Very frequent are the testimonies in the old Councils of about the beginning of these CCCC. yeers, in which Tithes are spoken of as due generally by Gods Ordinance. as, *Decimas Deo dari omnino non negligatur, quas Deus sibi dari constituit, quia timendum est, vt quisquis Deo debitum suum abstrahit, ne forte Deus per peccatum suum auferat ei necessaria sua*, which occurs in the Prouinciall Council of *Mentz*, held in DCCC. XIII. and is iterated in some<sup>l</sup> other succeeding of the same Prouince, & in the<sup>m</sup> Capitularies. And it is ordinarily grounded vpon the Leuiticall Laws (which are obuiously cited for the right of Tithes in the very<sup>n</sup> syllables of *Moses*) but sometimes also on *Abrahams* & *Iacobs* examples, as in *Walafrid Strabo*, that liued about DCCC. XL. whose words are, *Decimas Deo & Sacerdotibus Dei dandas Abraham factis, Iacob promissis*

i *Le Bret. Adouciz en la dicte cour. Playdoiz 27.*

k Vide *Innocentius*, 3. tom. 2. pag. 139. & 410 & App. ad Concil. Later. general. part. 13. cap. 2. & seqq.

l Vt in Concil. Mogunt. a. d. 846. & a. d. 887. in *Benedicti. Lewis. lib. 5. cap. 9.*

n Vide Concil. Aquisgran. lib. 1. cap. 11 & seqq. Tom 3. edit. penult. Biv. pag. 586.

*fit insinuat*; deinde *lex statuit & omnes Doctores sancti commemorant*; the self same being<sup>n</sup> referd also to one of the Councels of *Mentz*, of those times. *Andres* o *Dominica* and *Dominica* p *substantia* and *Dei* q *census*, and the like are the attributes giuen to Tithes, by the ancients of this age, which also they stile r *patrimonia pauperum*, and *Tributa egentium animarum*, and *Stipendia pauperum, hospitum, peregrinorum*; whence also the Clergie was not to vse them *quasi suis sed quasi commendatis*, as the words are of the Councell of *Nantes*, held about the former part of these CCCC. yeers. And Pope *Alexander* the third in an Epistle f to the Archbishop of *Rheimes*, sayes, *non ab hominibus sed ab ipso Deo sunt institutæ*. and in another to the Bishop of *Amiens*, he calls them *Sanctuarium*. and *Celestin* r the third; *Fidelis homo de omnibus quæ licite potest acquirere, Decimas erogare tenetur*. after him, *Innocent* the third; *Decimas Deus in signum vniuersalis dominij sibi reddi præcepit suas esse Decimas & primitias asseuerans*. and his generall Councell of u *Lateran* agrees with him. and it appears that *S. Vlrique* Bishop of *Auspurg* about the yeer DCCCC. L. in his Visitations had especially this article of inquirie; x *Si Decimas recte darent*; which shews his opinion that they were generally due. With these take the autoritie of the Pœnitentials exercis'd by the Clergie in that Age, by which, strict examination was to

n C. 16. q. 7. s. 6.

o *Leuit. lib. 7.*

cap. 152.

p *Concil. Tacin.*quod *Regaticum*dicitur, sub *Leon. 4.*q *Agrippin. apud**Burchard lib. 3.*

cap. 135.

r *Aquisgran. sub**Steph. 5. c. 116.*

extr. de dec. c. 26.

*Nantesiens. syn.*

c. 10.

f *Extr. de dec.*

c. 14. &amp; 15.

z *Eod. 33. ex**transmissa & c. 16**tuas nobis.*u *Cap. 54. & extr.**de dec. c. 33. omni**non fit.*x *Berno. lib. 1.**in vita S. Vdalrici**cap. 10.*

be made at Shriffs, whether the penitent had paid all kind of Tithes, in these words. *Hast thou at any time neglected to pay thy Tents to God, which God himselfe hath ordained to be giuen him? or if thou hast done so or consented to the defrauding of the Church therein, first restore to God four-fold: and then must thou suffer penance with bread and water only, for twentie dayes.* So it is deliuerd in *7 Burchard Bishop of Wormes*, that collected the Canons about the yeer M. Neither was any difference in the nature of the increase by the common opinion of this time. The tenth of *2* all, aswell of all kind of Personall as Prediall, was taught due. Neither find I any man in this Age that by Doctrin expressly opposed any of this, sauing only that *French Leutardus*, who about the yeer M. held the payment of them vnneccessarie. *Decimas a dare, dicebat omnimodis esse superfluum & inane.* But also other opinions he had, that being against the vsuall Doctrin of the Church, gaue him the name of Heretique, which he kept till his miserable death. This may suffice for the expresse testimonies of Opinion of this CCCC. yeers touching the generall right of Tithes. But although this opinion be so frequently deliuered in such termes as may denote the Tenth due by *Gods Law*, (that is, as it should at first sight seem, by the *Diuine morall Law*, or the *Diuine naturall Law*, which should bind all men and

cuer,

y Lib. 19. de Penitentia. & in Penitential. Roman. tit. 8. cap. 17. idem habetur.

2 Celestin. 3. extra. de dec. c. 12. non est & 23. ex transmissa.

3 Rodolphus Glabur hist. 2. c. 11.

cuer, and are to this purpose both one) yet it is plain, by so much of the practice of the Laitie as the Clergie commonly allowd of, and by the generall opinion of the Time, that the persons held capable of them, were not only the labouring Priesthood or Ministering Clergie. The disposition of them in perpetual right to Monks, Nunnes, the poor in Hospitalls, to religious orders of Knights, and that out of one Prouince or Kingdome whatsoeuer into any other, in this time was allowd cleerly in practice; and according to that practice they were enioied. And the Clergie also generally agreed, that, by their Canonically forme of conueyance, Tithes might be giuen (although some ancient <sup>b</sup> Canons were for Parochiall right) to any Church, to Monasteries, Hospitalls, reliefe of Poor or Sick; that is, as <sup>c</sup> Iuo Bishop of Chartres (being a great Canonist about M. C. XXX.) in his iustifying the right of Tithes expresses it; *Decimas & fidelium oblationes Ecclesie* (so you must read, and so is his <sup>d</sup> Ms. copie) *lex caritatis communicare potest non tantum Monasterijs sed etiam Xenodochijs, infirmis & peregrinis*. For, saith he, *licet Decime & oblationes principaliter clericali debeantur militie, potest, tamen, Ecclesia omne quod habet cum omnibus pauperibus habere commune*. But this might not be done, as they would haue it, by the Lay owner only. For he well addes, that neuertheless no Monasterie might, by the <sup>e</sup> Can-

<sup>b</sup> *Leo 4. in c. 16. q. 1. c. 45. &c.*

<sup>c</sup> *Epist. 107. affipularum, c. 16. q. 1. c. 68. qui canon falso ad D. Hieronymum refertur. & Concil. Claramont. An. Do. 1095 c. 1. q. 3. c. 4. & c. 16. q. 7. c. 2. d. Ia Bibliothec. Cottoniana; ubi Codex elicit habet Ecclesiastica.*

<sup>e</sup> *Urban. 3. c. 16. q. 7. c. 39.*



nons, lawfully receiue a conueyance of Tithes, *ab illis ad quos non pertinet, id est à Laicis*. yet you see cleerly that Monasteries and other Churches did receiue them from Lay men, and continually enioyd them. So that the chiefeft difference twixt the Laitie and Clergie herein came to be, who should dispose or conuey the Tenth (according as they varied also about Inueftitures) not what persons (fauing in the vfe of Infeodations) might haue a perpetuall right in them. and in that difference the Clergie yeelded so frequently in receiuing, allowing and confirming arbitrarie conueyances (as is before shewd) of Tithes, no otherwise then as of Houses or Glebe, to Monks, Nunnes, or Churches far distant; that if they held them due to the labouring and Parochiall Minister (were he Bishop or other) by the *Diuine morall Law*, they did in this no lesse then commit against their own consciences, and exercise a kind of continuall and fearfull sacrilege. And indeed it appears that it was exprefly held against the *Diuine Law*, to conuey Tithes to any other Church then where the owner vsed most commonly to receiue his soules food. For the Clergie in a Petition to the Emperor *Lewes* the second, in the Councell of *Paui*a in D C C C. LV. confidently affirmed that it was generally taken, that such a conueyance to another Church *pro libitu* was aswell

f C. 26. q. 2. c. 36.

*diuinae* f *Legi*, as *sacris Canonibus contrarium*.

But

But then cleerly also, the chiefeſt practice of theſe C C C C. yeers was herein contrarie to the *Diuine Law*; a ſtrange imputation to lay on the time, if at leſt *Diuine Law* there, & *Deus præcepit*, and *Deus conſtituit*, & the like in their other paſſages for Tithes, denoted the *Diuine Morall Law*. But if you ſo vnderſtand it, how could that *Lex Charitatis*, that *Iuo* ſpeaks of, ſo diſpenſe with it? And with what colour could the Church ſo frequently practice againſt it, or pretend arbitrarie Conſecrations to be ſo meritorious? But for an Interpretation of their meaning, by ſhewing how others conceiue that *Lex diuina* here, look in the next C C C C. yeeres. As for *Exemptions*; ſome complaints were made againſt them by ſuch as loſt by them; as you may ſee by the Monks of *Clugny*, complaining againſt the *Ciſtercians*, and by *Peeter* of *Blois*. But out of them alſo may be collected, that the generall Opinion of the age was not, that they were due by the *Diuine Morall Law*. Was *Rome*, in thoſe ancient times ſo bold to grant ſo many Diſpenſations expreſſely againſt the *Diuine Morall Law*? Yet alſo *Iohn* <sup>h</sup> Biſhop of *Chartres*, in thoſe times, found much fault with the Exemptions giuen to religious perſons. *Mirror* (ſaith he) *vt fidelium pace loquar, quodnam ſit quod Decimas & iura aliena uſurpare non erubescunt. Inquiet fortè Religioſi ſumus. Planè Decimas ſoluere Religionis pars eſt*. And more to this purpoſe you may

g. *Pet. Cluniar.*  
lib. 1. epiſt. 33. ad  
*Innocent. 3. & Po-*  
*rrus Bleſ.* epiſt. 82,  
apud *Bachel Ec-*  
*cleſ. Gall. Doctes.*  
lib. 6. cap. 19.

h. *De uirg. Carlu-*  
*luna*, lib. 7. cap. 38.

may find in him, where he tells you, that these Exemptions did *derogare constitutioni Diuinae*. But the Clergie generally was much against the vse of *Infeodations* of Tithes and Churches into Lay hands, although it were practised by some Bishops and Religious Houses; who committed strangely, if they were also of opinion, that the right of Tithes was due to the Priesthood immediatly from the Morall Law. *Quid est enim* (saith Peeter <sup>i</sup> Damian) *Decimas in vsum secularium vertere, nisi mortiferum, eis virus, quo pereant, exhibere?* Hinc accidit quod & plebsanis iusta detur occasio, vt Matricibus suis Ecclesijs obedientiam subtrahant, vt non eis legitima Decimarum persoluant. And Alexander the third directed the Bishop of Amiens to <sup>k</sup> decree, that a gift of a Tithe by an Abbot into a Lay hand, was void, *quoniam sanctuarium de iure hereditario possideri non debet*. But these are only against Conueyances of Tithes already consecrated to Churches, and so hallowed. But, such as were by their first creation infeodated to Lay men, can no more be accounted (in their own nature) differing from other Temporall and Lay possessions, then Rents-charge, Estouers, the tenth sheaf, or the like at this day granted in fee by one Lay man to another. Neither indeed was the Churches right (what euer it were) to her Tithes properly diminished by such Grants. for if, at this day, the owner  
grant

i Lib. 4. epist. 11.  
Vide etiam Bul-  
lam Urbani 3. in  
Biblioth. Cluniac.  
An. D. 1185.

k Extr. de dec. c. 15.  
ad hac, & vide  
App. ad Concil.  
Lateran. pars. 4.  
cap. 1.

grant the tenth sheaf of lands titheable, to a Lay man, may not the Grant be good, as a Charge out of the land? and yet the Church there hath her right as before. But the truth, it seems, was, that in those elder times, Lay men that had created a Tenth into Lay hands, rarely, or not at all, paid any to the Church; and those Infeodations, once made, gaue them greater pretence, of with-holding what the Church demanded: as if it had been enough to say, they must not, could not, pay two Tenths out of their land; and that if a Tenth were once created to any man, nothing els might be exacted vnder the like name. The same may bee thought on in Consecrations to Monasteries. For if Tithes had been held generally due and paid parochially (as now) then cleerly, although a Lay man had granted a Tenth to another Church or Monasterie, what other foeuer had been due parochially, had, <sup>1</sup> notwithstanding the Grant, still remaind payable to the Parson. How could it haue been otherwise? And so no small number of doubly-paid Tithes had remaind at this day.

VII. The *Laws* made in this time for payment of Tithes, were *Imperiall*, *Prouinciall*, and *Pontificiall*. The first of the *Imperiall*, was made by *Charles* the Great, in a generall assembly of Estates, both Spirituall and Temporall, vnder him, in the XI. yeer of his reigne ouer *France*

R

and

1 Vide, si placeat,  
44. Ed. 1. fol. 5. &  
44. Assis. pl. 25.

and *Germanie*, and in the yeere of our Sauour, DCC. LXXVIII. it was there ordaind, *Vt vnusquisque<sup>m</sup> suam Decimam donet; atque per iurisdictionem Episcopi sui* (or *Pontificis*, as some Copies are) *dispensetur*. Which Law indeed, with diuers other, for true payment of Tithes, were generally made by him before his Empire, which began not till the yeere DCCC. yet because this was in the same termes receiued into those Capitularies collected by *Benedictus Lewita*, as from him being Emperour, it may well enough be titled Imperiali, and it is the first to this purpose extant, which can be at all stiled Generall, and was ordained by both powers, Secular and Spirituall, to any whole State: vnlesse you will beleue, that in *Scotland* a Law was established by King *Congallus* and his Clergie, about D. LXX. after Christ, for the generall payment of Tithes there, according as *Hector Boetius* hath related. *Congallus*, indeed, is by others affirmed to haue been verie carefull for the Clergies maintenance. But it will, I think, fall out to be too bold an assertion of that faining *Hector*, who often, as it were, makes Laws for the *Scotish* Kings, that hee may relate them; or else hee was deceiud by them from whom hee took it. No good Authoritie can iustifie such particulars of that age there. neither is it to be receiud otherwise then as fabulous, and proceeding out of that common mistaking of ancient passages of Church-

*m. Confess. Karoli*  
edit. à Vito A-  
merbachio, cap. 7.  
*Leg. Longobard.*  
*lib. 3. tit. 3. cap. 1.*  
*Capitular. lib. 5.*  
*cap. 123.*

*n. Hist. Sessorum,*  
*lib. 9. cauté de*  
*Congallo Bucha-*  
*manu. lib. 5. Sa-*  
*cerdotes, inquit,*  
*prædij alijsque*  
*præsentibus dita-*  
*uit. rē Decimis*  
*adjicere vir doctis-*  
*simus non ausus est.*

Church-reuenues, and confident (but ignorant) application of them to Tithes. But from that Law of *Charles* the Great was that exaction of Tithes, spoken of before by *Alchwin*; and thence are Tithes, in *Ansegisus* his collection of his Imperialls, so frequently mentioned, as of known right; and hence also had the title of the *German* Bishops, before spoken of, its originall. Those Capitularies, both of *Ansegisus* and *Leuita*, were collected by them about the yeer D. CCC. XL. in both of which, frequent constitutions are for Tithes, and for the parochiall right also of them. Yet with them also take the constitutions of *Charles* the Great, about the same time collected, but published by *Vitus Amerpachius* in the yeer M.D.XLV. as also others occurring in the collection of *Melchior Goldastus*. These, together with the Lawes of the *Lumbards*, haue very many constitutions of about the beginning of these CCC C. yeers for this purpose; and one only shall suffice to be here transcribed. *De Decimis* p *quas populus dare non vult, nisi quolibet modo ab eo redimantur; ab Episcopis prohibendum est ne fiat: Et si quis contemtor inuentus fuerit; si noster homo fuerit ad presentiam nostram venire compellatur, ceteri vero distringantur ut inuiti Ecclesie restituant quae voluntarie dare neglexerunt.* This was made either by *Charles*, or *Lewes* the first. but it is falsely referred to the Emperor *Lothar*, in the Laws of the

o. Ansegis. Cap.  
Ansegis. 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

p. Benedikt. Louis.  
lib. 3, cap. 45.

*Lumbards*. It was prouided you see against such as would not giue their Tithes, vnlesse they were purchased of them for valuable consideration. But the effect that these Lawes had, was short; the Laitie soon disobeying such commands as diminished their reuenues. And it enough appears in the storie of about the yeere 9 DCCC. XLV. that little or no practice was of any of those Lawes of the Capitularies, in behalfe of the Clergie; nothing being more frequent, then not only the denying them what they would haue had, but also the taking from them what they otherwise possessed. Nor could they haue sufficient remedie for it, either in the Councell of *Meaulx*, where, vnder *Lothar* the first, they humbly sought it, or long afterward, as is manifest in the Moniments of the succeeding ages. But by the way, whereas some (both strangers, and of our own countrey men) out of the ioint mention of *Nona* and *Decima* in those Imperi-all Capitularies of *Charles* and *Lewes* the first, fetch an example of a *Ninth* paid to the Church as well as a *Tenth*, and bring it as a character of the times deuotion; as if the Tenth had not then been thought enough, vnlesse a Ninth also, like a second Tenth, had been offered; it is a ridiculous error, and proceeds from grosse ignorance of the Common Lawes, Storie, Councells, and vse of that age. The Ninth and Tenth there spoken of, were only the rent due from the Tenants

q Vide *Baroniam*  
rom. 10. *An. Do.*  
845. & 846. *Flo-*  
*dord. hist. Rhem.*  
*Eccles. lib. 3. Iohann.*  
*PP. 8. epist. 121.*  
243. 245. 262. 293.



nants of Church lands by the ordinarie reservation of the Tenth, as of what was held, by many, of it selfe due to the Clergie, and of the Ninth, as of the Rent or consideration to be giuen to them as to Lessors for the received profits. so will it plainly appear in a multitude of old <sup>r</sup> authorities, to which I refer you. Neither was the Ninth here thought due otherwise, then as among the ancient *Bauarians*, the Tenth only from occupiers of Church Lands. The Tenth of the profits was all that their Laws <sup>r</sup> appointed to be paid for rent to the Church by Lessees. But also very many *Prouinciall Constitutions* were made for the true payment of Tithes about the beginning of this CCCC. yeers. as in the Councell of *Mentz* in the yeer DCCC. XIII. *Admonemus atque præcipimus vt Decimas Deo omnino dari non negligatur.* which words were receiued also into the Imperials. and with them agree diuers Councils, held about the same time; as the Councell of *Rheims*; the fourth of *Arles*; the second of *Chalons*, and many other following. And in *Scotland* (if we may beleue the <sup>r</sup> Autor, for though he speak very good language, yet he is of no such sound credit) about the yeer DCCC. XL. King *Gregorie* in his Laws for Church liberties, ordaind that the Spirituall Court only should haue conisans of Tithes; which had been perhaps all one as to haue established them to be generally due. for

<sup>r</sup> *Amosif. lib. 1. cap. 163. lib. 2. cap. 2. Louis. lib. 5. cap. 145. Concil. Turon. 3. cap. 16. Meldunf. An. Do. 835. cap. 62. Flodoardusf. Rheimf. Ecclef. lib. 3. cap. 4. Vide de Galliaf. constit. Imp. tom. 3. pag. 648. & quæ adiecta sunt C. 18. q. 1. c. 59. ord. Greg. c. 1. eg. Bauariorum 119. 1. cap. 14. de Colonis & sctis Ecclesiis.*

<sup>r</sup> *Histor. 202. hist. Scot. lib. 100.*

by the opinion of that Court it is likely they would then also haue been iudged so. And also among the ordinances <sup>u</sup> of King *Macbeth* about the yeer M.LX the same Autor puts one in these words, *Decimam partem Terræ nascentium pastoribus Ecclesiarum liberè conferto*: Many more of like nature are where we speak seuerally of the *English* Constitutions. For *Pontificiall* decrees; Publique moniments, I think haue none in expresse termes of command (except you look back to that <sup>x</sup> faind one of Pope *Damasus*) an-cienter then that attributed to <sup>y</sup> Pope *Nicholas* the second. *Præcipimus* (saies he) *vt Decima & primitiæ seu oblationes viuorum & mortuorum Ecclesys Dei fideliter reddantur à Laicis, & vt in dispositione Episcoporum sint; quas qui retinuerint a Sanctæ Ecclesiæ communione separentur*. The selfe same words <sup>z</sup> are also vnder the name of his next successor *Alexander* the second. That of Pope <sup>a</sup>*Leo* the fourth, about the yeer DCCC. L. *De Decimis, iusto ordine non tantum nobis sed etiam maioribus nostris visum est, plebibus tantum, vbi sacrosancta baptismata dantur, debere dari*, may be reckond for a Canon for the right of Tithes, if you will. but it seems rather it was at first a Declaration of an opinion then a Constitution. But both the other and that, with diuers passages also out of *S. Augustine*, *S. Ambrose*, and others, and those old Prouinciall Councils, that make for the generall right of Tithes, were

con-

<sup>u</sup> *Idem lib. 13.*

<sup>x</sup> *Sup. cap. 5.*

<sup>y</sup> *A. D. 1059. in Synod. Rem. &c. 16. q. 3. c. 3.*

<sup>z</sup> *Dist. 32. c. 6. in preter. S. deinde.*

<sup>a</sup> *C. 16. q. 1. c. 45.*

confirmed for generall Canon Law in *Gratians*  
*b Concordia discordantium Canonum*, by Pope  
*Eugenius* the third in the yeer M. C. LI. or  
 presently after. for howeuer some Canonists  
 ignorantly otherwise place the Collection of  
 that first part of the bodie of the Canon Law; it  
 is most plain that it was in that yeer collected by  
 him; which is best iustified by a most ancient  
 copie of it written before the *Paleæ* were inser-  
 ted, and remaining in the *Vatican*, with this *c* in-  
 scription: *Decretum Gratiani Monachi Sancti*  
*Felicii Bononiensis Ordinis sancti Benedicti com-*  
*pilatum in dicto Monasterio Anno Domini millesimo*  
*centesimo quinquagesimo primo, tempore Euge-*  
*nij Papæ Tertij.* enough other testimonie is of it.  
 And in the Councell of *Cleremont* held in M.  
 XCV. by Pope *Vrban* the second it was de-  
 creed, *Ne laici Decimam partem de laboribus suis*  
*retineant.* some other passages of Popes are a-  
 bout that time against the selling of Tithes,  
 which they call *Simonie*. And in *C. 16. q. 7. c. 1.*  
 after the passage of *Gregorie* the seuenth, before  
 cited out of his Councell of *Rome* against feudall  
 tithes, these words follow as if he had continu-  
 ed them; *Oportet autem congruentius nos Deci-*  
*mas & primitias, quas iure Sacerdotum esse sanc-*  
*imus, ab omni populo accipere, &c.* which compre-  
 hend in them a Constitution. but neither these  
 or any of the rest that follow there, are in that  
 Councell of *Gregorie*, neither find I whence  
 Gratian

b C. 13. q. 1. & c. 16.  
 q. 1. c. 41. & 109.  
 & c. 16. q. 7. palam

c Vide prole-  
 gomena, ad Corpus  
 Iuris Canonici,  
 auctoritate Gregorij  
 13. editi, & Abba-  
 tem V. Pargansum.

d. Reg. B. lib. 9.  
cap. 14.

e. Vide Mariam  
de reb. Hisp. lib. 9.  
cap. 11.

*Gratian* had them. But an Epistle <sup>d</sup> of that *Gregorie* is extant, wherein among other admonitions to some Princes of *Spain* (after such time as the profession of Christianitie there, was purged of some *Gotbique* corruption, by a <sup>e</sup> Councell held vnder *Richard* Abbot of *Marseilles*, the Popes Legat in *MLXXVI*. so I vnderstand that reference made, in the Epistle, to a kind of new conuersion to the Faith) he perswades them, *Decimas, quæ ad vsum tam ipsorum quam Ecclesiarum & pauperum proficiant, dare, totique regno indicere. Quod quidem nulli debet graue videri, pro meliori parte, videlicet semper victurâ animâ, quemque decimam Deo offerre, cum pro morituro corpore plurimæ gentes coniugibus suis tertiam rerum legibus compellantur exsoluere.* He admonishes, you see, and perswades, but commands not. He thought not, it seemes, his own power great enough to haue had effect in disposition of a Tenth part of euery mans reuenue, and therefore abstaind from command. neither could he haue pretended the autoritie of any Law or Canon, generally receiued into practice. for neither in his time, nor long after, till about *MCC*. were Tithes so generally paid (as since) without speciall Grant or Consecration (as is sufficiently shewed:) neither had any Generall Councell as yet once remembred the Dutie, or the name of Tenths. The first of the *Generall Councils* that mentions them, is the Ninth, that is, that of *Lateran*,

teran, held vnder *Calixtus* the second, about M.C. XIX. extant in the *Vatican*, and first published in the late Edition of the *Greek* Generall Councils printed at *Rome* by autoritie of the present Pope *Paul* the first, and now newly inserted into *Binius* his last <sup>t</sup> Edition. But they are there spoken of only, as they were receiued by speciall Consecrations. and in the Generall Councell of *Latran*, held in M. C. XXX. vnder *Innocent* the second, feudall Tithes are in the same syllables mentioned, as in the Decree of *Gregorie* the seuenth, before cited out of the Councell of *Rome*. And this also, taken out of the *Vatican*, is to be found only in those two late and fullest Editions. But of the Generall Councils (before that Edition at *Rome*) ordinarily known and read, the first that names Tithes, is the Eleuenth, that was held vnder *Alexander* the third, in M. C. LXXX. But there, Infeodations of them into Lay hands, and Consecrations or arbitrarie Conueyances of them to \* Religious Houses, without assent of the Bishop, are only forbidden. Neither was any Canon of a Generall Councell as yet found, that purposely commanded payment of them; nor any that expressly supposed them a dutie of common right, before <sup>s</sup> that of *Lateran* in the yeere M. C. C. XV. held vnder Pope *Innocent* the third, about which time, Ecclesiasticall Autoritie became more powerfull, the Canons were more receiued

f. 4. D. 16. 8.

\* Vide infr. c. 7.  
§. 11.g. Cap. 33. & in  
extr. tit. de Dec.  
c. 33. cum non sit.  
& vide caput  
prox. §. 1.

into practice (that before were little, especially herein, obeyed) and Parochiall right to Tithes grew to be more established; whereof, more in the next and last part of our generall Diuision, and in the *English* practice. But if that Canon in the *Lateran* Councell, held vnder *Alexander* the third, against arbitrarie Consecrations of Tithes without assent of the Bishop, might be vnderstood literally, and of new Tithes so created (neither is any thing in the Councell that denies that to be the meaning of it) then needed wee not perhaps seek further for the cause of that Assertion amongst our common Lawiers, *That, before the Councell of Lateran, euery man might haue giuen his Tithes to what Church hee would.* Who euer obserues the practice of the preceding time only, and the words both of that Councell, and, to the same purpose, of the other held vnder *Calixtus* the second, may well enough be perswaded, that the intent of those Canons were no otherwise. But in regard wee find that Canon of *Lateran*, vnder *Alexander* the third, to bee differently interpreted by *Innocent* the third, within twentie or thirtie yeeres after the making of it, and vnderstood only of Feudall Tithes formerly granted out from the Church into Lay hands (according as the Canonists after him also take it) we cannot be altogether so secure of that other interpretation. *In Lateranensi Concilio* (saith <sup>b</sup> *Innocent*; meaning, that vnder

*In Exce de his quæ  
s. à prat, sine as-  
sensu capituli. c. 7.  
cum Apostolica.*

der *Alexander* the third) *est inhibitum; ne qualibet Religiosa persona Ecclesias & Decimas de manibus Laicorum, sine consensu Episcoporum recipiat; per quod indirectè datur intelligi quòd sufficit consensus Episcopi, vt licitum Ecclesiæ sit Decimas de manibus recipere Laicorum.* Hoc autem de illis Decimis intelligimus quæ Laicis in feudum perpetuò sunt concessæ. But we must take it vpon his word only, and the credit of the following Canonists, that the Canon was so to be vnderstood. They may, as they will, vnderstand it by iudiciall application. but you may, at least, doubt still, that the Historicall vnderstanding of it, is to be had out of arbitrarie Consecrations before practiced. And it was euen equall to ordaine, that Lay men should not arbitrarily consecrate, and that they should not consecrate without assent of the Bishop; euery Bishop (I think) being supposed a carefull obseruer of the former Canons, which would haue induced parochiall right to Tithes, and generall payment. So that what in this kind might not be done without his assent, was conceiud as likely to be neuer done to the Churches preiudice. Let euerie able reader iudge here. but let him not be much swayed with the rable of late Canonists, that goe away cleer with this of Pope *Innocent*. When the Pope had said so, they made no scruple of the truth of it; and one takes it (as their fashion is) from another with too much easie



credulitie. But although this be not sufficient ground for that assertion of our common Lawiers (which cleerly, being rightly apprehended, is true; though lazie ignorance crie against it, euen to hoarsenesse) yet enough other will be found, whereof more, toward the end of the tenth Chapter.

*Of the time from M. C. C. or neere  
thereabouts, till this day.*

### CAP. VII.

- I. *The Canons of Generall Councils, and Decretals, for parochiall right in Tithes (not formerly otherwise conueyed) which now became more established.*
- II. *The opinion of the Canonists, in the question of what immediat Law Tithes are due by, is, that they are payable iure diuino.*
- III. *How the same question is determined by the opinion of the Schoolmen.*
- IV. *Of those that held them meer Almes.*
- V. *The opinion in Diuinitie, that concludes them due iure diuino. With a Determination of the Vniuersitie of Oxford touching Personall Tithes.*
- VI. *Laws, Customs, and Practice of France, in exaction of them. Of their feudall Tithes at this day.*
- VII. *Laws, Customs, and Practice in Spain, touching*

*touching the generall payment of Tithes. Tithes there, in Lay mens hands.*

VIII. Customs and Infeudations in Italie; Payment in Venice; in Germanie: Of the Hungarians, Polacks, Swethians, and others, touching the dutie and possession of Tithes.

IX. Of Tithes in Scotland. With an Example of an Appropriation of Churches and Tithes there, by Robert de Brus. And something of Tithes in Ireland.

**I**N these following times, the Canon Law grew to be of more force, and Parochiall right (through the Decrees made against that former course of arbitrarie Conueyances, and from the passages of Canon Law, that supposd the generall right of Tithes) became to be more established. But the Opinions of Canonists and Diuines haue been and are much different in the question, vpon what Law the generall right of them is immediatly grounded. But by the Practice of the Common Laws (for so much as I haue read) of all Christian States, they are subiect to Customes, and that sometimes as well in non payment as in payment of a lesse part. And Infeudations of them into Lay hands, yet continue in France, Spaine, Germanie, and elsewhere. And of Customes only and Infeudations wee shall principally speake in the practice of this time. For, what ever might here otherwise be remembered touching Compositions, Exemptions, or

such like, is but a meer consequent of those Customs, and of the Opinion that makes them due only by Positiue, Human, or Ecclesiasticall Law.

I. It is sufficiently manifested in the practice of the former C C C C. yeers, that the Laitie did vsually conuey their Tithes by *Consecrations* and *Appropriations* to what Church they would, and by *Infeodations* to Lay men. Their Infeodations were forbidden by the <sup>a</sup> Generall Councell of *Lateran*, in M. C. LXXX. whence that most known Canon *Prohibemus*, before cited, was taken into the bodie of *Gregories* Decretalls, and hath euer since been, and still is, in autoritic, and that also in the secular Lawes of *France* especially. It was in the same Councell ordained, That no religious Orders should receiue any Appropriations or Consecrations of Churches or Tithes, without assent of the Bishop. *Ecclesias & Decimas* (are the words) *de manu Laicorum, sine consensu Episcoporum tam illos* (that is, *Templars* and *Hospitalars*, against whom the prouision was chiefly made) *quam quoscunque alios Religiosos recipere prohibemus*. This was confirmed in the Generall Councell of *Lateran*; held vnder *Innocent* the third, in the yeer M. CC. XV. And a Canon of the Generall Councell of *Lateran*, vnder *Calixtus* the second, in the yeer M. C. XIX. (wherein parochiall Ministers were also forbidden to receiue Tithes,

a Videfis, cap. 14.  
& 9. edit. Romana  
& extr. de Dec.  
c. 19. & de Preb.  
& dyg. cap. 31. in  
*Lateranensi*, tit. de  
iure pat. ou. c. 17.  
nullus, & de hu  
qua sunt a pral.  
c. 7. cum *Apostolica*.

Tithes, or Churches, from the hands of Lay men, by Inueſtiture eſpecially, *Absque conſenſu & voluntate Episcopi*) was afterward, in diuers Epistles of Pope *Alexander* the third, receiued <sup>b</sup> and confirmed. And although manie Decrees were before againſt thoſe Conueyances, yet till theſe Generall Councils (vnder *Alexander* and *Innocent*) neither was the Autoritie of the Church ſo powerfull, neither were Epistles ſent from *Rome* ſo frequent, to put that in execution, which had ſo been there eſtabliſhed againſt that challenged right of the Laitie. But by this time, when the arbitrarie diſpoſition of the owner was thus prouided againſt (reference being made to the Biſhops aſſent, that was bound to ſquare all things by the <sup>c</sup> Canons, which would haue Tithes paid parochially, and became to be much more obeyed then before) it grew frequent, to haue Decretall Epistles ſent from *Rome* into euery Prouince, both to ratifie the former Conſecrations and Appropriations, (which the Popes <sup>d</sup> began alſo, at pleaſure, to declare ſometimes void, if made by Lay men alone) and alſo to exact parochiall payments of other Tithes, not canonically conueyed out of the Pariſh: and the reaſon ſometime was added; that is, <sup>e</sup> *Perceptio Decimarum ad Parochiales Eccleſias de iure communi pertinet*. and the Generall Council <sup>f</sup> of M. C. C. X V. had taken it cleere, and ſo expreſſed it, that in ſignum

vniuer-

b Extr. de inueſt. parr. c. 10. 11. 12. & de Inſtit. c. 3. ex frequentibus. Append. Council. Lateran. pars. 13. cap. 18.

c C. 18. q. 1. c. 45. & 56.

d Vide Innocent. 3. in extr. de hiis que ſ. a pſal. c. 7.

e Extr. de dec. in c. 19. cum conuincat.

f Ibid. c. 33. cum non ſit.

*uniuersalis Domini quasi quodam titulo speciali sibi Dominus Decimas reseruauerat* : And after a few words, the Canon is concluded with *Decimare cogantur Ecclesys, quibus de iure debentur*. And the action for parochiall Tithes in those times, as now, is called *& iure communi fundata intentio*; that is, by common right, Tithes parochiall and mixt were due to the Rector of the Parish (were he Bishop or Priest) if they were not otherwise, by speciall title, enioyed by some other Church, or discharged by Canonically Exemption. But how little this common right had before been practiced, appears not only in what is already declared, of the use of the former time, and in the doubts made by *Gratian* in the Decree, and Pope *Lucius* the third, *Alexander* the third, and others in their Epistles touching it, but also in other occurrences of somewhat before the beginning of these CCCC. years; amongst which you shall find, that both the religious and secular of the Clergie would usually take Couenants from their Tenants, to pay them the Tithes, and so prevent the Parson of the Parish where the land lay. If parochiall right had then been common, how could such a Couenant haue prevented the Parson? That practice is both related and remedied in the <sup>b</sup> Generall Councell of *Lateran*, of M. CC. XV. and an example of it in the Archbishopricque of *Matera* is remaining among the Decretals <sup>i</sup> of *Innocent*.

*g Ibid. c. 31. de  
dignat. aduersus.*

*h c. 38. de reser. de  
pauis. c. 17. plerique  
de videlicet Append.  
ad Council. Later.  
part. 13. cap. 6.  
i Titm. 3. Epist. De  
grat. lib. 1. c. 483.*

*nocent* the third, where also it appeares, that the Archbishop had complained to the Pope, That the Land-occupiers in his Diocese vsed to diuide their Tithes at their pleasure, and arbitrarily giue part to the Church, part to the poor, part to their kinred. for which hee had remedie by Pontificall Decree. Hereto you may adde that of an old Councell of *tribur*, in DCCC. XCV. *Vbi quis Decimas persoluebat viuus ibi sepeliatur & mortuus*. As if euery man, by the choice of the place of his deuotion, in paying his Tithes, might make it his Parish. And when *Alexander* the third, about the yeer M.C.LXXX. was to answer the doubt touching Parochiall right of Prediall Tithes (that is, whether they were due *intuitu territorij*, in regard of the limits within which they grew, or *obtentu Personarum*, by reason of the person, and so to be paid to the Church wheresoeuer the owner for the most part receiued the Sacrament and heard Diuine Seruice) he knew not how to determine it; and withall acknowledged, that although it had been often moued, it was neuer resolued. *Sanè* (saith <sup>1</sup> he) *cum huiusmodi quæstio temporibus prædecessorum nostrorum mota fuerit, non determinata, alijs intuitu Territorij, alijs Personarum obtentu Decimas afferentibus debere persolui, non est nobis facile certum tibi dicere*: which are the words of that Epistle; a part whereof is in *Gregories* <sup>m</sup> *Decretals*. So, that although by the

T

Canons

k C. 17. quæst. 1.  
c. 6. ubi conatur, in  
Concilio ipso, c. 17

1 Epist. Decretal.  
lib. 3. M. in Bi-  
blioth. Cottoni-  
ana.

m De Decimis, c.  
eius fiat,

n Vide C. 6. qu. 3.  
can. 15. & 56.

o Extr. tit. de dec.  
c. 4. commissum  
& Append. ad  
Concil. Lateran.  
pari. 13. cap. 12.

p De hu qua f.  
a pral. sine cons.  
c. 7. cum Apostolica

Canons they would haue had a vniuersall payment of Tithes, and although some much ancient<sup>n</sup> autoritie be in that Law for Parochiall payment, yet they had long before, and about the beginning of this last CCCC. yeeres, so much controuersie touching Parochiall right, that euen thence alone you may see, it was not so much as, in Opinion, established. Enough more like Examples are of that time. And you may obserue, that where Pope *Alexander* doth by Decretall command a Parochiall payment in the case of the Monks of *Boxley* (for so you must read in *Gregorie*; not *Bosse*, as it is in the most polite Edition) yet his ground is from a vse of Parochiall payment in that particular; without which, he had been as vncertaine there, as he and others are in Epistles of that time. But so farre also was the former course of *arbitrarie Consecrations* now withstood, that not only the Lay owner might not of himselfe consecrate the right of his Tithes at will, but also, although the Bishops assent had ioind with his in conueying any Tithes (except only such as were infeodated to him before the Councell of *Lateran* of M.C. LXXX.) the Conueyance had been declared void; and to that purpose only, of passing Feodall Tithes out of Lay hands to the Church, was the Bishops assent *P* decreed to bee sufficient. But howeuer, through those Oecumenicall and Pontificall Decrees, a more certaintie of Parochiall



chiall right was now begun; and though those old Canonists also, Pope *Innocent* the fourth, Cardinall *Hofstensis*, and some others, about the yeere M. C C. L X. writing on the Decretals, took Parochiall right as a thing cleerly established in Law, yet it is reported by some Ancients of good credit, that sufficient remedie was not fully provided against that practice of the former course of Arbitrarie dispositions of Tithes, till the Generall Councell of *Lions*, held vnder Pope *Gregorie* the tenth, in the yeer M. C C. L X X I V. in which, they say, it was constituted, *Vt nulli hominum deinceps liceat Decimas suas ad libitum, vt antea, vbi vellet assignare, sed Matrīci Ecclesie omnes Decimas persoluerent.* So *Randall Higden* the Monk of *Chester*, *Henrie* a *Knighton* Abbot of *Leycester*, and *Thomas* of *Walsingham* a Monk of *S. Albons*, tell vs; and all three of them liud but about C. yeers from the time of that Councell, and might so perhaps, haue had for it some ancients Auctoritie from some now lost monuments. And vpon this, doubtlesse, was that assertion corruptly related in the printed Examination of *W. Thorp* before *Arundell* Archbishop vnder *Henrie* the fourth; where he answers, *That one Pope* <sup>r</sup> *Gregorie* the tenth ordained new Tithes first to be giuen to Priests now in the new Law. But the bodie of that Councell (which was first publiht only in the late Edition of the Generall

q Ms. in Biblioth.  
Cassiana.

r Apud Fox, in  
Hist. 4. pag. 494.

¶ Exat in lib. 6.  
tit. de reb. Ecclesi-  
um alien. c. 3. hoc  
consultissimum.  
¶ In 6. tit. de  
Electiōis. c. 13.  
in generali.

Councels at *Rome*, and is now also in the last Edition of *Binius*) hath no such matter in it. One Canon is there, specially against <sup>r</sup> Alienation of Reuenues of the Church by Clergie men, and another, against vsurpation <sup>r</sup> of them by Lay Patrons in time of Vacancie; but neither out of them, or the rest, can you extract what those Monks haue related. But although they might erre in the relation of the Canon, yet, doubtlesse, they had some speciall memorie, that Parochiall right to Tithes had been but of late years, and sometime after M. C. C. receiud into the more known and practiced Law; although the Doctōrs so confidently before talke of it. For we must not doubt, but that those elder Canons, notwithstanding their great autoritie, were by most different degrees of time receiud into vse, and in some places, not till long after M. C. C. as wee see particularly in that of the practice in the Diocese of *Palentia*, till M. C. C. C. X X I I. which was, that euery man, wherefoeuer hee dwelt, yet might declare himselfe to bee of what Parish hee would, and to that Parish only giue his Tithes: Which was remedied by a Councell then held at *Villadolid*, vnder *William* Bishop of *Sabina*, the Popes Legat; where he begins with, *Parochiarum diuisio à sanctis patribus instituta certitudinem Parochianorum & Decimarum debitam solutionem inducit*. For indeed, Parochiall payment regularly was now grown,

grown, by the Canons gaining force, to be the only *debita solutio*. The next authoritie of a Generall Councell for Parochiall right (after that of *Lateran*; wherein yet nothing directly constitutes it, but rather it is supposed, as of former time) is the Condemnation, in the Councell of *Constance*, of *Wicklefes* assertion, That Tithes were meer Almes, and that parishioners might, *ad libitum suum* (as his position was) *eas auferre propter peccata suorum Prælatorum*. And since that, in the Generall Councell of \* *Trent* vnder *Pius* the fourth, about M. D. L X. this Canon was published. *Non sunt ferendi qui varijs artibus Decimas, Ecclesijs obuientes, subtrahere moliantur, aut qui ab alijs soluendas temere occupant & in rem suam vertunt, cum Decimarum solutio debita sit Deo. Et qui eas dare noluerint aut dantes impediunt res alienas inuadunt. Precipit igitur sancta Synodus omnibus cuiuscunque gradus & conditionis sint, ad quos Decimarum solutio spectat, vt eas (ad quas de iure tenentur) in posterum Cathedrali aut quibuscunque alijs Ecclesijs, vel Personis quibus legitime debentur integrè persoluant. Qui verò eas aut subtrahunt, aut impediunt, excommunicentur; nec ab hoc crimine, nisi plenà restitutione secutà, absoluantur.* For Popes Decretals of this time, I referre you further to the Laws made or receiud in *England*.

II. In the Opinions that haue been since the beginning of these C C C C. yeeres, touching

\* *Sess. 25. de reformatione, cap. 13.*

Tithes; the chiefest to be obserued here, are those which determine, *by what immediat Law Tithes are payable*. For how euer very many other questions, about the dutie of them, are vsually disputed, yet resolute but this, one way or the other, and most of the rest that follow, about *Cusomes, Appropriations, Exemptions*, and such more, will soone haue little doubt. This point hath been controuerted both betwixt *Canonists* and *Diuines*, and between *Diuines* and others of their own profession. The *Canonists* (except very few) with one consent grounding themselues vpon the letter of some of those passages of Prouinciall Councils, of Fathers, and of Popes, before rememberd, generally deliuer, that Prediall and Mixt Tithes are due to bee paid *iure Diuino*, which is commonly taken for the *Diuine Morall Law*, and they vsually cite also the Leuiticall Precepts, to iustifie it. Yet doe they allow the right of former Tithes, Canonically setled by Consecrations, Appropriations, and Exemptions also, for the most part. for to those they require Pontificiall Confirmations, or a supply of them, by such prescription of time, as may suppose them. For they take this Ecclesiastique reueneue to be no otherwise due to the Clergie by common right, but that the Pope (whom they, to the vtmost, maintaine, as they haue reason; for out of the Popes autoritie, first came their generall profession, as it now remains one) may

as a supreme Steward of the Clergies maintenance, dispose of this or that particular part of it. This is their common Opinion, although some, in the Point of Exemptions, haue made scruple. But where none of those speciall Titles preceede, there they cleerly agree also, that by common right, all Prediall and Mixt Tithes are due parochially. Neither need <sup>u</sup> the Rector in his Libell vpon his *Actio Confessoria* (which is the generall name of such Actions as lie for demand of incorporall rights, as with vs, our *Quod permittat, Quare impedit, Droit d'auowson*, and the like) propose more, then that the increase is within his Parish; and the other Titles (if any be) must be shewd in the Exception, or Answer. But by the way; though the Doctors commonly suppose the Action for Tithes to be *Confessoria*, and grounded vpon common right, yet that great and ancient Lawier, Bishop *Durand*, or *Speculator*, would haue them demanded by the *Conditio ex Canone*, that is, as we call it, by *Action vpon the Statute*. The Canons whereupon he would haue it grounded, are those passages of *S. Hierome* and *S. Augustine* in C. 16. q. 1. c. 65. & 66. and hee takes for his autoritie, why this kind of Action should be brought, that of <sup>z</sup> *Paulus*, out of the Imperials, *Si Obligatio lege noua introducta sit, nec Cautum eadem lege, quo genere Actionis experiamur, ex lege agendum est*. So that as *ex Lege* in the Imperials, so *ex Canone* in the Pontifi-

<sup>u</sup> *Speculator lib. 4. p. 1. a. 112, de Decimis. Propter Farinac. Criminal. de res. Rota Rom. 391. n. 13. alij palium.*

<sup>z</sup> *ff. de condit. et leg. l. vna.*

Pontificall Law, the Action should be brought. He liud long since, and periaaps, in regard of the various practice that had preceeded against the common opinion of his profession touching the common right, he thought it most secure for the plaintife, to ground his Libell vpon the Canon, rather then vpon common right. But for *Personall* Tithes (which yet they agree not all to be due *iure Diuino*; although Pope 1 *Innocent* the fourth make it a wonder to see any man denie it, and diuers of them follow him; the old prece- dents also of Libels in *Speculator* being equally for these, as for prediall) they are held payable only to the Church, where the owner, for the most part, receiues the Sacraments and Diuine Seruice; not where the gaine is made. neither in them is any regard had to the parish. Whence it comes, that *Jews* and 2 *Saracens* (because they haue no personall vse of the Euangelicall Ministerie) are to pay none by this Law, sauing in case where they hinder the continuall pay- ment of some former personall Tithe had from Christians. The best Autoritie they bring for personall Tithes, is, that in *Deut. XII.* where *Tubes and the offerings of your hands* are spoken of. By reason of that most receiued ground amongst them, That the Tenth is due to the Church *iure Diuino*, their most common opini- on is also, that euery man is bound to pay the whole Tenth, or the value of the whole Tenth,

of

y *Ad tit. de Pa-  
roch. & al. Paroch.  
xxv. c. significauit.*

2 *Parormis, & gl.  
ad c. ius nos, tit.  
de Decimis.*

of all encrease, notwithstanding any custome or prescription to the contrarie. Indeed, no reason is, that a custome should take away what God had immediately, and, by his Morall Law, established. The consequent is good, were the antecedent cleerly proued. But some of them, and such as are of no small name, deliuer their Law to be only, that custome cannot wholly discharge any Land of Tithes, but it may diminish the *quota*, or bring them to a lesse quantitie, or value; that is, that a custome to pay a Twelfth, Twentieth, or lesse, is good. This some also allow only in customes immemoriall, which they suppose to haue the force of a Papall priuiledge or exemption. But their common and receiued opinion is, that in Prediall and Mixt, no prescription or custome to pay any lesse part or value then the Tenth, or *de modo Decimandi*, much lesse *de non Decimando*, can be good. (Which well agrees with the Ciuill Law also. For by a rescript of the Emperor *Anastasius* <sup>a</sup>, no prescription may be of non payment of all or a lesse part of Tributes, Subsidies, or other Rents of the publique Treasurie; that is, of such things as are due to the Emperor *in signum vniuersalis Domini*, as Tithes are supposed to God and his Ministers.) Except only, where the certaintie of some equall yeerly payment, without regard to euery annuall encrease, may be adiudged to be equiualent to a Tenth, by reason of the incertaintie

<sup>a</sup> C. 112. de Prescript. 30. vel 40. ann. l. 6. compert sed & vide ibid. Bald. Cyn. & Saticum.



b *Gl. & Panormi.*  
220. ad c. in ali-  
quibus extr. de De-  
cimo. alij.

c *Petr. Raun.*  
*apud Maiorem in*  
*sent. 3. dist. 37.*  
*quod ff. 36.*

d *Varior. resolut.*  
*lib. 1. cap. 17.*

taintie of sterilitie or fruitfulnessse. In this<sup>b</sup> case they allow a Custome, although the Tenth of euery particular yeer be not paid; because, *Ecclesia*, they say, *potest se habere ad damnum vel Lucrum* indifferently. But those other common opinions of theirs are so frequently obuius, that to cite Authorities for them, were but to imitate *Rablais* his *Bridoye*. Yet wee may specially remember, that the Doctors of the *Rota* (of *Rome*, I think) according to their profession also aboue C. yeers since, determind, *quod quota Denaria est de iure Diuino hodierno die*. But some Canonists withall are, and those of no small note, that agree, the determination of the Tenth to be only *de iure Ecclesiastico*, and that no more *Ius Naturale*, or *Diuinum Morale*, is in it, then what commands a competence of meanes to be giuen to the Priesthood. So<sup>d</sup> *Connaruias*; so, some others. But few enough are of this opinion. All that are of it, make no doubt of the right of Customes (prouided alwayes, that a sufficient reuenue be possessed by the Minister) but allow the payment of them to be diminished or taken away by Custome or Prescription. But they are generally against the possession of *Feudall Tubes* held by Lay men (which they suppose, but falsely, to haue all had beginning from the Church) although Infeodated before the Councell of *Lateran*. Yet indeed some of them expresse an allowance of them; but that is rather in mingling

ling common Laws with their Canons, then writing as Canonists. The common Laws of all Nations (where feudall Tithes are; and I thinke certainly, in all Christian Nations feudall Tithes at this day are found) allow them now, and suffer the Canons to haue no power ouer them. And thence is it (lest they should grossely determine against such possessions as the Church anciently, as well as the Laitie, had by Infeodations setled, and Posteritie still maintaine) that some receiue into their Conclusions an admittance of what their own profession abhorres. Which may not be anisse said also of such of them as maintaine a Custome in the *quota*, or the like. For that is done rather by struiuing to conforme the Canons to the common Laws, or secular Constitutions of the State where they liue (as our Ciuilians, in the practice of the ancient Canon Law, do here also) then by iudging according to the bodie of the Canons, that regularly allow no sufficient exception against parochiall payment of the whole prediall Tenth, but only Papall autoritie, or a Title canonically setled in some other Church. And the better to make these Infeodations stand with their opinions, they haue also a vsuall distinction of *Ius percipiendi*, and *fructus Decimarum*. The *Ius percipiendi*, they say, cannot be transferd, nor euer was, by the old Infeodations, because euery layman is incapable of it. but the *fructus Decimarum* only, as they teach, is

what passed, and is still possessed, in consideration that the possessors should defend the Church from Heretiques and Tyrannie. The summe of what the old Canons haue, both against ancient and new Infeodations, is in the former Chapter noted; and according to them, how that distinction will hold, I see not. But, among them, great opinion is also, that all Feudall Tithes are to be restored to the Church, and that he which holds them, may not lawfully passe them ouer to another Lay man; but may only, with assent of the Bishop, giue them to some Church. *Nec multum refert quæ Ecclesia habeat dummodo extirpentur à Laico*, as *Panormitan* sayes. And to this, they abuse that Canon *Prohibemus*, of the Councell of *Lateran*, that was not indeed made against Tithes then infeodated, but only against new Infeodations, as Pope *Innocent* the fourth there well teaches. For, saith he, *Non loquitur de Decimis infeodatis, sed de alijs male detentis*. Which iustifies what is in the former C C C C. yeers, against the receiued Interpretation, deliuered.

III. The *Diuines*, of since the beginning of this time, haue had their seuerall Determinations and Doctrines vpon this point, and those may be, for method, put chiefly in a Three-fold difference; although rather the second Doctrine (as presently will appeare) were but an issue of the first. and the chiefe question among them comes to this, Whether, by Gods immediat  
Morall

Morall Law, the Euangelicall Priesthood haue a right to Tithes, as to their Inheritance, in equall degree, as the Lay man hath to his Nine; or if they haue them only as by human Positiue Law, and so giuen them for their spiritual labor? that is, in brief, Whether by originall distributiue Iustice, or by commutatiue, they are payablen? although, in the Opinion which wee shall here make the third, all Positiue or human Law be, for the most part, neglected; whereof, more presently. But in that (which we here make the first of those three Opinions) it hath been held, that the Tenth considered *quoad quodam partem*, or, as it is, a determined part, and denoted from that number, is due only by Law Positiue and Ecclesiasticall; but, *quoad substantiam suam*, or *Cleri sustentationem*, or in regard to it, as it denotes a necessary or competent part of the maintenance of the Clergie, that it is due by the *Diuine Morall Law*. And to the purpose of this distinction, they interpret the Leuiticall commandments of Tithes; and deliuer that *quoad substantiam suam*, or as it was generally for the maintenance of the Ministerie in the *Iewish Church*, it is *Morall* or *Naturall*, there being (according to consideration of it so farre) the very Character of it written in the Tables of mens hearts; that is, that Spirituall Laborers are to be rewarded with temporall bountie, as euery laborer is worthie of his hire. But *quoad*

*quotam partem*, it is, they say, a Iudiciall (or Ceremoniall, as some will) and that it hath been brought into the Law of the Gospell by Ecclesiastique Doctrine & Constitutions (both which we haue before related) proceeding from it only *per vim eius exemplarem*, or by imitation of the *Iewish* state, ordered by the Almighty; and not in that regard *per vim obligatiuam*, or any continuing force of it vnder the Gospell. And that the Church was not bound to this part, but freely might as well haue ordained the payment of a Ninth, or Eleuenth, according to various oportunitie. This is commonly taught by the old Schoolemen, *Hales*, *Aquinas*, *Henricus de Gandauo*, *R. de Media Villa*, *Cardinall Caietan*, and diuers others; (but fullest, in my iudgment, by *Iob. e Maior*) and maintained by great men, that in our times follow their wayes of disquisition. The first that expressly made this distinction, was that *Alexander Hales*, that liued about M. C C. X X X. and thus<sup>e</sup> determind, *Præceptum de Decimis est præceptum Iudiciale, vnde non est dicendum Morale, quia secundum suam determinationem* (that is, *secundum quotam partem*) *non est scriptum in corde hominis, nec Ceremoniale, quia non est datum principaliter in figuram significationis, sed Iudiciale quia datum simpliciter in rationem æquitatis mutue distributionis, vt sit æqualitas dati & accepti inter seminantem spiritualia & dantem temporalia, secundum quod possibile est, &c.*

<sup>e</sup> *Ad 3. Senti.  
dist. 37. quest. 36.*

<sup>f</sup> *Part. 3. q. 51.  
memb. 3.*

&c. And *¶ Aquinas*; *Determinatio Decimæ partis soluendæ est autoritate Ecclesiæ*; and adds, that the ground of it, which he calls *radix*, is the text <sup>h</sup>, *If wee sow vnto you spirituall things, is it a great thing, if wee reap your carnall things?* The same is by *Hen. de Gaudano* <sup>i</sup> exprest in these words, *Adueniente Lege Euangelicâ & cessantibus Ceremonijs, cessauit & solutio Decimæ, pro quota illa: sed mansit pro illo quod in illa erat iure Legis Naturæ, & ad illud reduxit Lex Euangelica.* And deliuers accordingly the right of them to be *partim de iure Naturæ & Euangelij*, that is, *quatenus vacantibus Diuino Ministerio communiter ab omnibus debet provideri*; and, *partim de iure humano Ecclesiastico, or Positiuo*, that is, *quoad quorundam partem*. And to the same purpose, the rest. But whereas some make that learned *Hales* the first Autor of this doctrine; doubtlesse they erre. For howeuer *Lex Diuina, Deus Præcepit*, and the like, frequently denote the right of Tithes in the former CCCC. yeers; yet first consider, what is there admonished touching the practice of the time, and from thence you may, perhaps, interpret their meanings to be otherwise, then as they are commonly (and especially by the Canonists) taken. Could the Church haue, before his time, held cleerly, that the Tenth was due by the Morall Law, and yet, against their owne consciences, generally, giue way to, and practice also, those Conueyances, which

g 3. 2. 9. 87. a. 1. 1.

h *Epist. 1. ad Cor. 9. 11.*i *Quodlibet 4. 9. 28.*

which can haue no power ouer that which the Morall Law, euer binding vniformely, hath ordained ? And indeed some great Doctors teach, that the *Ius Diuinum*, denoted in those passages of the bodie of the Canons, was no otherwise vnderstood, then only that we are bound to it by the Law Positiue of the Church, imitating the Diuine Iudicials (which retaine still, as Cardinall Caietan teaches, their *vim exemplarem*, though not *obligatiuam*) and is well enough thence stiled *Ius Diuinum*. *Cum ergo dicitur* (sayes the Cardinall <sup>k</sup>) *Lege Diuina, aut Deo iubente ad Decimas tenemur* ; *intellige exemplariter*. Neither doth he otherwise interpret other passages of the Fathers, which are to that purpose. *Neque aliud*, are his words, *sancti patres intellexerunt* . and remember also, that those Fathers as firme it not in disputation, but only in exhortation to the people ; which is specially obseruable to any that knows the course of their writing. With Caietan also ( in that the Law for Tithes is not Morall) Bellarmin, Suarez, Malder Bishop of Antuerp, and late professor at Louain, and others accord, and make it the *communis opinio Theologorum* ; and some will haue it Ceremoniall, rather then Iudiciall. but wee dispute not thereof. But also an example is brought out of S. Ambrose his vse of <sup>1</sup> *Quadragesima diuinitus constituta* , denoting the Ecclesiastique commandement of Lent, that was but in a kind  
of

<sup>k</sup> Ad 2. 2. q. 87.  
art. 1.

<sup>1</sup> Videbis I. Maior.  
ad 4. sent. dist. 15.  
quest. 3.



of imitation of our Sauiors abstinence. Which shews, that what is from the holy Word exemplarily taken, is denoted sometimes with such attributes, as might signifie a Morall Constitution. And the truth is also, that *Ius Diuinum* is very often, and was, about the time of the bodie of the Canon Law published, taken for *Ius Ecclesiasticum*, or *Ius Ciuile quod ad Ecclesiæ administrationem spectat*. as you may plainly see in an Epistle of *Alexander* the third, that liud till M. C. L X X X. where he directs, that a Church hauing been in possession X L. yeeres of Tithes growing in another Parish, should haue them still by that prescription, because in such case, *de iure diuino & humano melior est conditio possidentis*. Who sees not, that he there vses *Ius Diuinum* for Positiue & human Law of the Church? What hath the prescription of X L. yeeres, or primer possession to do with the direction of Diuine Morall Law? Or indeed, if he had meant, that Tithes, *quoad quotam*, had been due for the Ministers Salarie by the Diuine Morall Law, how could prescription haue had place against it? Part of that Epistle is <sup>m</sup> in the bodie of the Canon Law. But because it is fuller, and indeed more authentique, in a verie <sup>n</sup> ancient Copie of Decretall Epistles (the most of them being of *Alexander* the third) it shall thence be hither faithfully transcribed. *Alexander Mauricio Episcopo. Ad aures nostras, te significante, peruenit, duas Ec-*

<sup>m</sup> Extr. de Pra-  
scriptis, c. 6. ad aures.

<sup>n</sup> In Ms. lib. 6.  
in Bibliotheca  
Cottoniana.

c. L. p. 104. eius a-  
B. i. 104. eius a-  
B. i. 104. eius a-

*clesias sepius sub examine tuo litigare super Deci-  
mis quas una Ecclesiarum in alterius Parochia  
XL. annis possedit, ac per hoc o petit eius actio-  
nem extantam. Altera vero volens eas iure Paro-  
chiali euincere, præscriptionem non debere sibi ob-  
esse proponit. Ideo quid iuris sit in hoc casu, tua  
nos duxit fraternitas consulendos. Tuæ itaque fra-  
ternitati literis præsentibus innotescat, quod iure  
diuino & humano melior est conditio possidentis,  
quoniam quadragenalis præscriptio omnem prorsus  
actionem secludit. And, that *ius diuinum* was in  
that sense taken in these Ages, appeares also by  
*Hales*; where, although p he before held cleer-  
ly, that the commandement of the *quota pars* was  
iudiciall, yet he sayes, that *Decima sicut Domi-  
ni generalis census* is payable *iure diuino*, that is  
plainly (in his meaning) by the Ecclesiastique  
Constitution of the Church, imitating the Di-  
uine Iudicials. Neither was the phrase other-  
wise vsed in that of the Generall Councell of  
*Lateran*, held before the time of *Hales*, in the  
yeer M. C C. XV. *Illæ quippe Decimæ necessa-  
riò sunt soluendæ, quæ debentur ex lege diuina vel  
loci consuetudine approbatæ.* I know the Cano-  
nists miserably wrest themselues about the inter-  
pretation of that place. but, when they haue done  
all in mistaking it, could the Councell think, that  
*loci consuetudine*, some were due, yet that all *lege  
diuina*; taking it for the Morall Law. for, if any,  
then all, by the Morall Law. Cleerly then the  
English*

p. Part. 3. q. 51.  
mem. 17. 5.

English 9 of that was, *Those are necessarily to be paid, which are due either by the Positive Law of the Church* (which extends not alwaies vniuerſally) *or Custome of the Place.* Some refer that *ex consuetudine* to personall Tithes, supposing 1 them due only by Custome or Positive Law. And that also might be a tolerable interpretation, if at the time of the Councell such a distinction had been receiud twixt personall and prediall. But can it then stand for truth, that *Hales* was the first that brought this opinion of the *quota* being due by human determination in the Church, and not by the Diuine Morall Law? Indeed he was the first that accurately disputed the question as a Schooleman, and expressly made the distinction, but cleerly not the first that so held the point. To the former Testimonies hereof, adde that of *Hugo de S. 1 Victore*, who liud neere C. yeeres before *Hales*. He speaking of payment of Tithes before the Law, vnder the Law, and since, concludes with, *Primum igitur ante legem, paruulos Consilio nutriuit (Deus) postea sub lege exercitatos præcepto tentauit. Nouissimè sub gratia perfectos in libertate spiritus ambulare permisit.* By this first Opinion of the Schoolemen, to which the ancient Fathers are (you see) by some of them squared, no difference is to be made of Prediall, Mixt, and Personall Tithes, how euer some scruples about that difference, haue been needlessly

q Bellarm. etiam  
optimè interpre-  
tatur, lib. 1. de  
Cler. cap. 26.

r Vide Henric.  
Boschius in tit. de  
dec. 1. per. 1. m. 2.

s Eundem, Theolog.  
lib. 1. part. 11.  
cap. 4.

handled by them. For *quoad substantiam Decime*, or *Decimam sustentationis*, as they call it, or, as the laborer is worthie of his hire, both are equally due. The Morall Law, according to them, designes not out reall possessions to be more subiect here to the naturall part of commutative iustice, then personall profit. And therefore also *Alexander Hales* aptly determines, that *Decime tam personales quam prædiales sunt in præcepto*, that is, both *quoad substantiam*, but neither *quoad quotam*. And, that in *Venice*, and other such Cities, where no Prediall Tithes are, a Personall Tenth is due by the Positiue Laws of the Church, as, in them also, a sufficient maintenance is to be had for the Clergie, by the Morall or Naturall Law. In summe, by this opinion, Customes of payment of lesse, of nothing, and other Ciuill Titles, that haue force against Ecclesiastique Law Positiue, are allowd, so long as the maintenance of the Minister be otherwise competent. Both failing, then is that defect to be supplied (notwithstanding any Ciuill exception) due by the Diuine, Naturall, or Morall Law; which, inscribd in all hearts, admonishes, that reward is due to euery laborer; much more to him of the Spirituall Haruest. Other questions about Tithes are disputed in the Schoolmen. but it is not hard to coniecture, how the most are to be determined (according to them) by their resolution of this alone; therefore I omit them.

You

You see how opposit this Opinion is to that receiud among the Canonists, twixt whom and the Schoolmen \* was vsually great dissention. It is not to be doubted, but that the Schoolemen lookt much further into all that they medled with, then the Canonists could do. And had the Canonists agreed herein with them, they might, with fewer absurdities, haue maintained diuers of their scrupulous Positions. And some of <sup>u</sup> them were so moued at the Schoolemens Disputations, about *Hales* his time especially, that they knew not which way at all to determin it. This difference of the Canonists and Schoolmen is rememberd by *I. Maior*. *Theologos hic* (saith x he) *Canonistæ Hereticos vocant, quia dicunt Decimas non esse de iure diuino*. But which are here the more competent Iudges of the two, he tells you further, in his answers to *Peeter* of *Rauenna*, a Canonist of his time. He liued about C. yeers since.

IV. The second Opinion in Diuinitie, is of those, that (hauing their first ground out of the determination of the Schoolemen) held Tithes to be *meere Almes*, and not to be paid to the Ministers of the Gospel by any Parochiall right, as a necessarie dutie to the Euangelicall Priesthood, but that they might be retained and disposed of at the owners will; especially if the Pastor y well performed not his function. Of this, were both some of religious Orders in

X 3

their

t *Oselano, lib. 1. dialog. 3.*

u *Raymundus apud Hostensium in summ. 111. de decimis, num. 10.*

x *Ad Scot. 3. dist. 37. quasi. 36.*

y See *Wicliffe* complains to the K. and *Parliament* artic. 3.

their Preaching, and also others opposit enough to them in Doctrine. The *Dominicans* and *Franciscans* especially ( who began both about the yeer M. CC. X. and had in their Monasteries store enough of Schoolmen) made it a gainfull Doctrine to teach Lay men, that they were not bound to pay their Tithes to their Ministers, as to whom, by any Law of God, that portion necessarily belonged. For when the determinations had preceded, by which the *quota* was concluded, not to be due *Iure diuino*, they of this side neglecting (for the most part) the positieue and human Laws made for them, and regarding only the expresse Law of God, taught them due only as Almes, or as what *debito charitatis*, not *debito iustitiæ*, was to be dispensed. By this Doctrine the *Mendicants* especially often got them to themselues (like the old \* *Eustathians*) as Almes to be arbitrarily disposed of to such as took any spirituall labour. as also made their own detaining of them in Lands, out of which they were Parochially due, to seem the lesse wrongfull. but against their detaining of Parochiall Tithes a Canon was made in the Generall<sup>2</sup> Councell of *Vienna*, held in M. CCC. XL. and their Doctrine was taxed by Pope *Innocent* the fourth about M. CC. L. writing<sup>3</sup> vpon the Decretals, where he calls them *isti noui Magistri*, & *Prædicatores qui docent*, & *prædicant contra nouum & vetus Testamentum.* and Richard Arch-

\* Vide Zouar, in  
Concil. Gangr.  
Caus. 7.

<sup>2</sup> Clementin tit.  
de Decimo. c. 1.  
Religiosi.

<sup>3</sup> Ad extr tit. de  
Paroch. c. ult.  
significauit.

Archbishop of *b Armagh*, complains against them for possessing the people with an opinion that the command of Tithes was not Morall, but only Ceremoniall, and not to be performed, by constraint of conscience, to the Minister; and that out of whatsoeuer at least was giuen to any of the foure Orders of Mendicants, no Tithe was in conscience to be deduced for the Ministers. with these in substance did others also at the same time agree, that otherwise were opposit to the whole Nation of Friers. as with vs *Iohn Wiclese*, *Walter Brute*, *William Thorp*, and some such more whose Arguments for their opinions are at large in *Foxes Acts* and Moniments of the Church of *England*, whither I had rather send the Reader then stuff this place with them. *Wiclese* *c* Position (for *d* which as for an Heresie some haue been since questiond with vs) is before related, as it was condemned in the Councell of Constance. and *Thomas Walden* the Prouinciall Gouvernour of the *Carmelits* in *England*, about the end of the time of *Henrie* the fourth, wrote against him in it, vindicating the dutie to the Church, but not so much, *secundum quodam sed magis secundum substantiam*, as his *e* own words are. Hereto may be added one of the articles of the *Bohemians*, published about CC. yeers since, wherein a Diuine right to Tithes since the *f* Gospell is denied. wherupon also they long since took all temporalities from their

*b* In *defensor, Catorum*, &c vide, si placet *Alex. lib. 4. cap. 60.*

*c* Et *Wiclese* in *Fascicul. ver. expensarum*, pag. 143. in *Wiclese* *Theop. 6u.*

*d* 10. *Hier. 7. fol. 17.*

*e* *Doffina* *6. lib. 1. lib. 2. 65.*

*f* *Fox in Hen. 5. fol. 603.*



*Ioh. Maior. in  
sent. 3. Dist. 37.  
q. 36.*

*h Paul. Gryllus in  
apud Camill. Bo-  
p. II. in Confessorum  
part. 1. consil. 35.  
edit. à I. Baptista,  
Cajaro.*

their Ministers, and brought them to stipends. Others haue been possesst with this conceit, and among them you may remember *Gerardus* <sup>h</sup> *Sagarellus*, before *Wiclese*, burnt also for an Heretique. And the great *Erasmus* gaue the common exacting of Tithes by the Clergie of his time, no better name then Tyrannie. But that of his, diuers haue sufficiently both reprehended and confuted, and especially *Albertus Pius Carpenfis*, in his labour against him. With this may be reckond that of *William Russell* a *Franciscan* who vnder *Henry* the fift had publicly preacht that the payment of personall Tithes to the Pastor, were not in Gods Commandement; but that it was lawfull for euery Christian to dispose of them arbitrarily to charitable vses. but of him, see more in the next and third Opinion, where the words of his Doctrin are exprest in a letter from the Vniuersitie of *Oxford*, to the Conuocation of the Clergie.

V. The third Opinion is of those who agree with the *Canonists*, that the right, of the *quota* of Tithes, immediatly is from the *Morall* or *Diuine Naturall Law*; some impudently vrging with a commandement giuen to *Adam*; others of them prouidently retrayning all their arguments to such grounds for the Conclusion, as may be had out of *Abrahams* example, referd to the application of it in the Epistle to the *Ebrews*; but others also not so circumspectly, taking

king in the *Leuitical* commandements of Tithes for their most sufficient autoritie. For the first kind that talk of *Adam*; I think indeed that in the time of this light of learning, none haue durst venture their credits vpon such fancies. yet, that it was some opinion that had at least in preerence many autors in the Church of *England*, in the blinder time of our ancestors; I thence collect, for that in a *Penitential* made for direction of Priests in auricular Confession, and written (as my Copie is) about *Henrie* the sixth, the Priests examination and aduise vpon the point of Tithing, is thus expressed. *Hast thou truly doo thy Tithings and Offrings to God and to holichirch? thou shalt vnderstande that at the beginning of the worlde, when ther was but oo man, that is to sey, Adam, God chargyd him that he sholde truly of al maner thyng giue God the X<sup>th</sup>. parte, and bad hym that he sholde teche his children to doo the same maner, and so forthe al men into the worldis ende. And forasmuch as ther was that tyme no manto receiue it of hem in the name of holichirche, and God wolde not that thei sholde haue but IX parties Therefor he commandid hem that of euery thyng, the Tith parte should be brent. I fynd that afterward Adam had two sonnes Caime and Abell, Abell tithed truly and of the best. Caym tythed falsely and of the werst: at last the fals Tyrber Cayme slough Abell his brother. for he blamyd hym and seyed that he ty-*

shed euell, wherefore our Lord God accursid Caym  
and al the erth in his werk. So ye now se that fals  
tything was the cause of the first man/slaughter that  
euer was. and it was cause that God cursid the  
erthe. it is literally transcribed as I find it. that  
writing of Cayme for Cain is ordinarie in the  
moniments of that age, as you may find in *Wick-*  
*leues* works, *Waldensis* his Doctrinal, and others  
of like nature. But see here the effect of per-  
uerse opposition on both sides. Some Friers,  
prouiding only for their own wealth, would  
haue had them reckond meer Almes, and so haue  
gotten them from the Secular Priests. and others  
would haue had them retained by Lay men. The  
Secular Priests on the other side would rather  
instruēt the Laitie with ridiculous falshoods (in  
the termes whereof they would not spare to a-  
buse the holiest Name) then not seem to say e-  
nough for their own gain. In those times they  
did so. they saw the Friers dangerous doctrine  
to their reuenues, and therefore omitted no ar-  
gument, no course in opposing it. a notable te-  
stimonie whereof is had also in that of Frier  
*William Russell* a *Franciscan* that in the Con-  
uocation of 5. Hen. 6. was vehemently accused  
because he had preached, that Personall tithes  
were not necessarily payable by Gods Comman-  
dement, but that euery man might dispose them  
at his pleasure in charitable vses. the summe of  
which was, that euery man might or should ra-  
ther

i Ex Archivis  
Arch. Cant. haufte  
V. C. Arch. Duck  
L. D. in vita  
Th. Chicheley Cant.  
Archepisc. pag. 73.

ther giue them to the begging Friers. a doctrine of no small preiudice to the Secular Priests, if once publicly receiued. This *Russell* was by the Conuocation enioyned to recant at *Pauls Crosse* on a prefixt day, before which he fled the Kingdom; and after publique citations against him, was solemnly pronounced an Heretique for it. his opinion also being condemned by both the Vniuersities. the letters then sent to the Conuocation, from *Oxford*, both shew the determination of that Vniuersitie on the point and the particular Tenet also of *Russell*. therefore we insert them. the direction is to the Clergie of *Canterburie*-Prouince from the *Vniuersitas studij Generalis Oxoniæ*, after which follows a preface in generall termes against such as forsook the ancient waies and fell into new heresies. then they go on with *sed quia in multis nouitas* (so are the words of it, as I haue it faithfully transcribed to me through the courtesie of my most honord friend M<sup>r</sup>. *Thomas Allen* of *Glocester Hall*; whose name it were not without offence in me, at all to mention without speciall reuerence, aswell to his singular humanitie as to his fulnesse of learning & worth in good Arts) *Sed quia in multis nouitas parit pericula, in quibus antiquitas non peccabit, illud esse censemus inconcusse tenendum quod ab antiquis patribus constat clarissime præfinitum. Verum quia nuper nobis innotuit cuiusdam nouelli* (that is of *Russell*) *insana doctrina*

h. Ex Articulis  
Oxon. in Bibliot.  
Bodleiana.

1 L. Taciturnitas.

doctrina contra Decimas personales (cuius miramur audaciam & dolemus insipientiam) sed eius pertinaciam & Ecclesie contemptum suslinere veremur, & ne nostra<sup>1</sup> taciturnitate seu negligentia tacito consensui adscribatur, in ipsa materia scribere curauimus quod concordēs sentimus, & in euidentē testimonium nostro sigillo communire decreuimus, ad veritatis dilucidationem & obsequium Ecclesie, ut tenemur. then they deliuer their determination thus. Dicimus & firmiter concipimus quod Decimæ personales tam ex præcepto iuris diuini quam sanctorum Patrum traditionibus sub auctoritate Ecclesie in concordia iuris iudicio debentur Ecclesijs & earum Ministris Curam animarum habentibus & Sacramenta ministrantibus ex auctoritate Ecclesie. Magna namq; est sacro Sanctæ Ecclesie auctoritas extra quam fides plane perpendit nullam posse peruenire salutem fidelibus. Ne illuc ergo resideat spiritus pestilens aut opinio corruptens ubi locus queritur fidei Orthodoxæ, verba per aduersarium præmissæ nostræ sententiæ prædicata, quæ etiam sub Auaritiæ subtili fūco deprehendimus palliata, reprobamus & tanquam erronea & hæretica declaramus. Quorum demens tenor cum reprobo sensu sic sequitur, Catholica damnatione fulminandus. Decimæ personales (this was the doctrine of Frier Russell) non cadunt sub præcepto diuino, saltem ut soluantur Parochiali Curato; quare licet vestrum unicuique, nisi consuetudo in contrarium fuerit, in pios usus pauperum eas diligere.

*ffensare. Et iterum Personales Decimæ sub diuino non cadunt præcepto neque iure debentur, ubi solutionis non est consuetudo. But they thus damne it. Quiscunque hanc sententiam tenuerit, & pertinaciter defenderit apud reputationem nostram Hæreticus est censendus, & quia à sana doctrina Ecclesiæ est diuisus, à corpore eiusdem Ecclesiæ, velut membrum putridum, est præscindendus. O honorabile fratres & Domini, O vniuersitates Catholice, & quicunque fideles scrutamini Scripturas, Canones inspicite ac eorum naturales concipite rationes. quam proditorium est tributum negare altissimo? quam inhumanum à laborantibus abstrahere debitum? quam graue schismatis exemplum auctoritati Ecclesiæ publice & pertinaciter resistere? ac etiam iustitiæ obuiam contra præcepta Canonum res alienas invadere? nimis cruenta ac sacrilega est hæc auaritia quæ antiquissimi iuris Decimale debitum solum Consuetudini adscribit, & in dubium revocat ut laborantium victum iusse exhauriat. quod Ministris Ecclesiæ ad eorum honestam sustentationem firmum persisteret si Decimæ possunt ad libitum conferri & ius Decimandæ ex Debito non esset? O utinam aut respiscant & ad Ecclesiæ gremium redeant, qui tanto facinori saeuere conantur; aut asserrimis censuris, ne simplices inficiant, mordaciter feriantur. Sic vnanimes in vera doctrina Ecclesiæ permaneamus ut ad eum tendere valeamus, de quo canit Propheta. Quærite Dominum & confirmamini, quærite faciem eius semper. sic letetur*

*cor quærentium Dominum hic in via, quatenus ipsum quærentibus dignetur esse merces in patria, Amen.* They were, me thinks, somewhat vehement and very confident in the point. Neither haue I elswhere seen so great autoritie against *Russell*. If *Russell* were therefore an Heretique, doubtlesse he hath had and now hath many fellow-Heretiques. for thus, many, say the most of such as most curiously inquire herein, and diuers Canonists also that are for the morall right of prediall and mixt Tithes, denie that personall are otherwise due regularly then as custom, or Law positue (which is subiect to custom) directs. But iudge you of it, Reader. I only relate it, and return to their prosecution against *Russell*. at length news came that he was at *Rome*, whither presently the Conuocation sent agents (to whom they allowd for an honorarie salarie, a farthing out of euery pound of Church liuings) that might there question him before the Bishop of *Rome*. a delegation of the Conisance of the cause was made to a Cardinall, who adiudged him to perpetuall imprisonment vnlesse he recanted. the Frier afterward brake prison and ran home again, where at *Pauls Crosse* (when nothing els could satisfie the secular part of the Clergie) he solemnly abiured his heresie, as they calld it. and to preuent the like in the doctrin of other Minorits, *Chicheley* the Archbishop enioind them all that in their publique Sermons they



they should teach personall Tithes to be due by the Laws of God and the Church. Of later time others haue written for the diuine right and generall dutie of Tithes. you may see *Albertus Pius Carpenfis* against *Erasmus*, *Baronius* in his digression touching them, others, but especially the diuers Treatises written to that purpose of late by our Countrie men, which are read in e-uery hand. I purposely abstain from particular mention of their names. But neither haue only single autors been lately of that side for prediall and mixt. whole Synods also of this age haue in expres words been for them, through whose autoritie & this ancients before rememberd they might haue fortified their Conclusions with far greater names, then by citing some one or two late single men, as they vsually do. To omit the Councell of *Mentz*, held in the yeer M. D. XLIX. where it is deliuered that *Decimæ debentur iure Diuino* (and some other are to that purpose in the *Decreta Ecclesie Gallicanæ*, collected by *Bochell*) In an Edict of *Henrie* the second of *France* in M. D. XLII. relation is of a remonstrance made to him by the Bishop, Dean, Canons, Chapter and Clergie of *Paris*; wherein they take it cleer, that tithes and first fruits were *introduites & insituees de droit diuin & partant deussent estre payes Loyauement & sans fraude*. The like, of the Clergie of the Diocesse of *Troyes*, is mentioned

in *Al. quoniam*  
*Classe 75.*

in *Edictes & Or-*  
*donnances de*  
*France tom. 4.*  
*217.22.*

in an edict of Charles the ninth, in M. D. LXII. in the same words. and in the yeer before by a Generall Synod of all the Clergie of France at Poissy, a complaint was made with that presence in it. the words of the Edict best shew it, Charles &c. à tous ceux qui ces presentes lettres Verront, salut. De la part de nos chers & bien amies conjiellers les Archeuesques & Euesques de nostre Royaume et des deputez des Clergez, qui ont este n'agueres assemblez a Poissy par nostre commandement, nous à este remonstré, que combien que les Diximes et Primices, qui sont leur principal reuenu, soient introduites & insituees de droit diuin, & partant deussent estre payées loyaument & sans fraude: ce neantmoins plusieurs Agricoles, proprietarees, &c. with these may be reckond, that of the Clergies petition in the <sup>b</sup> parliament of 50. Ed. 3. wherein they begin with *Licit Decima siluæ, presertim caduæ, de iure diuino & ecclesiastico Deo et ecclesiæ sit soluenda, &c.*

VI. But Although by this Opinion and that of the Canonists, Tithes be generally due by the diuine Law, and so not subiect (if with them you take it for the diuine morall or naturall Law) to Ciuill Exceptions as Customes and Prescriptions, of discharges or of paiment of lesse, or such more, whence also reall compositions haue been condemned *quia Decimæ cum temporalibus non sunt commutandæ*, as the words of an old Pope were to the Bishop of Cusa; yet the practised Com-

<sup>b</sup> R. & Parl. 50.  
Ed. 3. arr. 199.

<sup>c</sup> Append. ad  
Concil. Lateran.  
pari. 4. cap. 1.

Common Law (for by that name, as *common* is distinguished from *sacred*, are the Ciuill or Municipall Laws of all Nations to be stiled) hath neuer giuen way herein to the Canons. but hath allowd customes, and made them subiect to all ciuill titles, Infeodations, discharges, compositions, and the like. Of *Compositions* no more shall be spoken, seeing they consist rather in individuals, then of any generall course. we only remember them here as one kind of discharge, among other that haue been allowd by common Laws. and where Customes, and Infeodations hold, no man can doubt of the lawfulnessse of Compositions. But for *Customes*; in the Edicts made by those Kings of *France* vpon those remonstrances it appears, that, what euer the Clergie supposed by their *Dixmes introduites* and *insituees de droit diuin*: they complain of abuse only in due paiment of Tithes out of lands *suiets & redouables auxdits dixmes &c.* that is, subiect and liable to the paiment of Tithes. neither in other words do the Edicts and their verifications giue them remedie. And notwithstanding that it were once (according to sundrie Canons of that Church) thus commanded by an old Law of the year <sup>d</sup> M. CC. XXXVIII. made by S. Lewis, *Decima quibus fuit longo tempore ecclesia per malitiam inhabitantium defraudata, Statuimus & ordinamus quod resituantur citius, & amplius laici decimas non detineant sed eas habere*

d Edicts & Ord.  
manus tom. 4.  
pag. 493.

*bere clericis permittant*; yet, in that state, against the whole course of the Cannon Law in this kind, they haue, what by reason of ancient Infeodations still continuing, what through customs, allowed diuers lands to be not at all subiect to any Tithes payable to the Chuech. For their *Infeodations* (although none can be there new created) such as were made before that Canon *prohibemus* of the Councell of *Lateran*, held vnder *Alexander* the third, are to <sup>e</sup> this day remaining, and are conueied and discend as other lay inheritances; excepting only such, as being discharged of feudall seruice, haue been giuen in to the Church. For, their Lawiers with the common opinion (but erroneously) suppose that all such Infeodations came from the Church; and therefore they agree if any feudall Tithes be conueied into the Church <sup>f</sup> freely by themselves (not as annexed to other fiefs, as castles, or manors, nor subiect to tenures reserued) that then they are in the Church, as it were *iure possliminij*, or as we say, by way of remitter; that is, they are so annext, that they may not be transferd againe into Lay-hands, more then any other Tithes which are the ancient reuenue of the Church. whence it hath been adiudged also in the Parliament of *Paris* in the case of the Bishop of *Baieux*, that Tithes so conueied are not <sup>g</sup> subiect to the custome of *droict de Retraiēt lignagier*, that is, the right of the heire apparants redeeming an inheri-

<sup>e</sup> Videffis *Guido-  
nem PP. Decif.  
288. & Confuet.  
Bituricenf. tit. 10.  
de Custume. pro-  
diale*, §. 11.

<sup>f</sup> Vide *Carol. Ma-  
lm. in Confuet. Pa-  
ris*, des Fiefs §. 68.  
pag. 1295. & segg.  
Et *Bertrand d'Ar-  
gentre in Confuet.  
Britan. artic. 26.  
122. 1114.*

<sup>g</sup> *J. Lucius Paris.  
Placid. Curia lib. 2.  
tit. 5. §. 2.*

inheritance sold by his ancestor within a yeer and a day, or some such certaine time. But this point of remitter, they ground not so much vpon the nature of the Tithe, as vpon an old Law of S. *Lewes*, wherein libertie is giuen that all persons *Decimas percipientes in nostra terra, & in feudis mouentibus mediate vel immediate de nobis quas clerici perciperent, si eas laici non perciperent, possint eas relinquere, dare & alias quocunq; ius titulo, & licito modo ecclesiis concedere tenendas imperpetuum, nostro vel nostrorum successorum assensu minimè requisito, &c.* whereas (by the way) some of their lawiers<sup>b</sup> say, that feodal Tithes there purchased by Clergie men, are at this day subiect to the *doiect de nouueaux acquests* i. a kind of fines for alienation, which I could not yet learne how it well stands with this of S. *Lewes*. But they commonly interpret it as an ordinance to this end, that when the Church (the Parish<sup>i</sup> Church only to which they are supposed to haue been due) had gotten them free by sale or gift or otherwise, they should be perpetually annex to it. and were it not for this ordinance, which interpretation hath thus applied, their Lawiers ought to haue enquired more carefully about the originall of euery Infeodation. for, where it began from a Lay-man, there, what cause is of remitter? And these kind of feudall Tithes also of their own nature are meer Lay possessions and determinable in that kingdome, only before the

<sup>b</sup> Bacquet des  
droits de Domains  
traict. 4. part. 3.  
chap. 30.

<sup>i</sup> Voyez Pasquier  
en les Recherches  
liv. 3. chap. 35.

secular Iudge, as it appears, not only in an old Ordinance of *Philip le Beau*, touching the iurisdiction of Tithes, and in the Protocolle or Register of the Chancerie of *France*, but also in a late Arrest of the Parliament of *Paris*, where a Curat sued before an Officiall for his *Canonica portio* (which hath been there sometime & adiudged the fourth part. but is arbitrarily determined) against some other Churchman that enioied the Tithes of the Parish, who pleaded to the iurisdiction, that the Tithes were feudall, and desired that he would not hold plea of what so much belonged to the Kings Court; but the Officiall first gaue sentence that the Defendant should bring in his proofs of the Tithes being feudall; which failing, he proceeded to the point of the Action. thereupon by *appel comme d'abus* it came into the Parliament of *Paris*, which after solempne Argument gaue & iudgement that the Officiall had vsurped ouer the Royall Iurisdiction, in that he had at all proceeded after the simple allegation of Infeodation, which alone binds the hands of the Ecclesiasticall Iudge that hath no more power to enquire of the infeodation or of Tithes as feudall, then of any other Lay inheritance. and in the same case, reference is made to some other iudgments of like nature: and the reason giuen in the Arrest is mainly, because Tithes of their own nature and originally are not otherwise spirituall,

v Code des Decis.  
lib. 1. tit. 10. decis.  
35.

z Corbin en les  
Loix de la France  
Arrest 66. Et Code  
des decis. lib. 1. tit.  
10. decis 17. &c  
voyez Papon en  
Notaire vol. 2.  
liv 8. fol. 551.

rituall, or belonging to a spirituall Court, then only as they were annex to a Church or some other hallowed place. *La raison est*, are the words, *que suyuant le doctrine de S. Thomas, nous Tenons qu'en la loy de grace, les Dixmes sont deues non de droit diuin, mais positif; & l'esglise en naissant n'a este fait Dame de ce droit, ains par le don & concession des Rois, Princes, & autres a qui de droit il appertenoit.* whence, if they were annex to any Church, they were of Ecclesiasticall iurisdiction that was giuen anciently for them; but being as feudall inheritance, although they once were in the Church, yet a new Character of being meer Lay is restored to them. Those <sup>a</sup> Infeodations of Tithes are there very frequent, and in very many Parishes the Tithes are taken only by Lay men. But for them, so much. Customes in payment and non payment of the Tenth, haue euer held in that Church, which might alone be proued out of some passages in Gerson, and in <sup>b</sup> Iohannes Maior, who tells vs that *plurimi in Italia & Francia de multis rebus quotam non dant.* But it may more fully be manifested by Edicts of late time. in one of Charles the ninth, and another of Henrie the third; *Dixmes se leueront selon la Coustume des lieux & la cotte accoustumee in iceux. Et ou la dit Coustume serra obscure & incertaine, serra suiue celle des lieux circumuoisins.* The French Customes ( according to diuers vsages of their Prouinces) are

<sup>a</sup> Bertrand d'Argentre in Conf. Briss. art. 366. des Appropriations, pag. 1111.

<sup>b</sup> Ad sent. 3. dist. 37. quæst. 36.



frequent for paying a lesse part then the Tenth, and cleerly allowed \* by diuers Iudgments. Neither is the Canon Law, which allows not Customs, suffered to be there practiced. And for customs of paying none or *de non decimando*; in some cases they hold there also; and that by force of that *Lex famigerata* (as Du<sup>d</sup> Molin calls it) their *Philippine* which is an Ordinance made by *Philip le Beau* in M. CCC. III. (but it is falsly and diuersly referd to other of their *Philips*) commanding that no new exaction should be made of Tithes not accustomed to be paid. *Senescallus* (it saies) *ad requisitionem consulum locorum quoruncunque, defendat ipsos consules & vniuersitates & singulos à noua impositione seruitutis facienda per Prælatos & alias personas Ecclesiasticas, & à noua exactione decimarum & primitiarum & prestationis passata, prout de iure fuerit & hætenus est consuetum fieri.* By this autoritie, whereas in the Parish \* of *Brantbel*, in the Diocesse of *Meaux*, the Prior and Couent of *Nosire Dame de Vaurart* purchased certain Land that had formerly paid Tithe Corne to the Rectör, and made fish Ponds in it, the Rectör afterward was bard in his Action for Tithe of the fish; and one reason was vpon this *Philippine*, because no such Tithe had beene vsed to be paid. so in *Auuergne*, in *Berry*, and other Prouinces, some customes of † non payment hold good. And ofttime the King there sends commands grounded vpon

e Videbis Guido-  
n. m. Papa. Decif.  
224. Code de decif.  
l. 1. tit. 10. decif. 7.

d Ad Edict. Henr.  
3. contra datas  
paru. & abus. Cu-  
rig Romanæ.

e Code des Decif.  
liv. 1. tit. 17. De-  
cif. 9.

f Et testatur ex  
ijs Couaruuias  
lib. 1. Var. Rejolus.  
cap. 17.

vpon this *Philippine*, that new Tithes not vsually paid should not be exacted by the Clergie. *Litteræ* (saith my Autor) *dietim conceduntur in Cancellaria Regia super nouis decimis, ne a Laicis exigantur per eorum Prælatos, quæ fundantur in ordinatione Philippi Pulchri Francorum Regis facta die Veneris ante Cineres, anno M. CCC. IV. Cap. XXIX. huius tenoris, Item quod Senescallus, &c.* And expressly the customs of <sup>h</sup> *Berry*. Item *par la Custome, disme est doibt paier seulement des choses dont est accoustume payer Disme, &c.* where *Boerius* saies, he hath seen it accordingly for other places often adiudged at *Paris*. and in an Ediēt of 10. *Hen. 4. of France* touching the payment of Tithes by those of the reformed Religion, the payment is commanded only, *selon l'usage & coustume des lieux*. and accordingly diuers Arrests of Parliament also haue been. And although somtimes Customes haue beene there disallowd, especially *de non decimando*; yet that hath proceeded chiefly from the vsurpation of the Canons, where the secular Law was wrongfully neglected; as you may see in the example of that of the Ecclesiastical court at <sup>k</sup> *Rhosne*, wherein the Laitie were compelled *ad reddendas Decimas de feno & aliquibus alijs de quibus apud eos inconsuetum erat reddere decimas*, as *Maiors* words are, who concludes, that had the Iudge been other then a Canonist, he would not so haue adiudged it.

g. *Carol. de Graf. folio Regal. Franc. lib. 2. inc. 7.*

h. *Tit. 10. des Coustumes prediales, § 12.*

i. *P. Martii, lib. tom. 1. lib. 2. pag. 225. in 8.*

k. *Tit. 3. Som. d. 8. 37. quæst. 36.*

VII. In *Spaine* also some infeodated Tithes from ancient time are in Lay hands, which the <sup>r</sup> Clergie about M.C C C.L X X X. would haue had into their reuenue, vnder *Iohn* the first of *Casile* and *Lions*; but could not. and in an Ordinance of the same *Iohn*, against all such as should vsurp the <sup>u</sup> right of Tithes, a prouiso is that it should not extend to such Tithes or Church Reuenue, as the Crowne or any subiect had from ancient time enioied. And a third part of Tithes due to the King, is menciond in their <sup>2</sup> Laws, as graunted to him from the Pope, of which, at his pleasure new Infeodations are made. And *Petrus* <sup>1</sup> *de Lorca* remembers, that the Pope *Regibus Hispaniæ cōcessit tertiam partem Decimarum & alijs secularibus absq; consensu singularum Ecclesiarum*. among these you may reckon those Tithes in the Crowne, which by graunt from the Pope, King *Ferdinand* and Queene *Isabel* had in the Kingdome of *Granado*, in consideration of their endowment of Churches there. and of them and their iurisdiction, whereto they are subiect, thus <sup>2</sup> *Couarruias* an excellent Lawier of *Spaine*. Semel, saies he, *ex literis regijs vidi Decimarum causam tractari inter Ecclesiasticos apud Granatense Prætorium, ex eo quod Reges Catholici Ferdinandus & Elisabeth Decimas huius Regni Granatensis obtinuerint à Pontifice Maximo cum onere dotandi Ecclesias*. that is, the Iudges held plea of them by

<sup>t</sup> P. Matth. ad  
Guil. Pap. decis.  
288. ex Chronico  
Ioh. 1. R. Castella,  
& vide Petr Bellu-  
gam in Spec. tit. de  
Decimu,  
<sup>u</sup> Ordennanc <sup>u</sup>  
Reales de Castella  
lib. 1. tit. 5. ley 1.  
c. 3.

<sup>x</sup> Recopilacion por  
Philip. 2. lib. 1. tit. 5.  
<sup>&</sup> Gregorio Lopez  
in Partida 1. tit. 20  
leg. 22.  
<sup>y</sup> In 2. 2. D. Th. m.  
disput. 40. memb. 1.  
num. 16.

<sup>2</sup> Prælitic. quæst.  
cap. 35.

by Commission from the King, not by spirituall power, which otherwise regularly hath conifans of Tithes; although another great Lawier<sup>a</sup> of that Countrie denie that the Conifance of such Tithes lawfully belongs to any other iurisdiction then spirituall. Neither hath the Canon Law been so powerfull there, as to make Tithes payable against Customes, for paiement either of a lesse part, or none. And howeuer in an Ordinance of the yeer M. C C. X C I V. *Alfonso*<sup>b</sup> the ninth, published his *mandamos y establescemos por siempre, que todos los hombres del nuestro regno den sus diezmos derechamente y cumplidamente a nuestro Sennor Dios de Pan y de Vino y ganados y de todas las otras cosas que deuen dar de rechamente segun manda sancta yglesia*, wherein he seems to establisth, that whole Tithes without any Diminution should be alwaies paid to the Church, of Corne, Wine and Cattell and all other things (which Ordinance also is exemplified and confirmed by *Iohn* the second of *Castile*, and *Ferdinand* and *Isabel*; and accordingly, *Alphonso Diaz de Montaluo* his glosse on it, makes it to be consonant wholly to the Canon Law) and the whole course of their ancient bodie of the Law, in their *Partidas* be agreeable with it, yet the practice in that state hath been and is, that if suit be commenced in the spiritual Court for new Tithes, formerly not accustomed to be wholly or not all paid, and such custome or pre-

a. *Gregorio Lopez*  
ad *Partidas* p. 12. c.  
109. 110.

b. *Fuero Real de*  
*Espana* lib. 1. tit. 1.  
y en *Pragmaticas*  
y por recopilacion  
mandado de los dñs.  
*Ferdinando y Isab.*

scription be pleaded, and the Official or Ordinarie allow it not, vpon complaint to the Kings Court, the defendant shall (as in case of Prohibitions in *England*) haue his remedie. This is declared by <sup>c</sup> their *Couarruias*. Erit, saith he, *obseruandum, causam Decimarum quandoque in his regnis* (that is, *France* and *Spain*) *traktari apud regios Auditores; nempe cum Laici contendunt Decimas ab eis exigi, quæ legitima Temporis præscriptione* (which is vsually thought should be immemoriall, and so is their <sup>d</sup> practice; although the most common time in other things be *X L.* yeers) *minime debentur, & sunt remissæ; denique concuruntur contra morem & consuetudinem Decimas ab eis exigi. nam etsi condemnentur à iudice Ecclesiastico, nihilominus, ex querela, causa, retinetur apud Regia Prætoria. Siquidem & literæ Regiæ passim dantur à supremo Senatu ad id vt Laici non cogantur Decimas illas soluere quæ solui legitimâ temporis præscriptione non consueuerunt.* And with him agrees *Alfonso de Azue-do*, that writes vpon their *Ordennanças Reales*. But these kind of their prohibitions are grounded vpon their Ordinances, forbidding *Decimas a Laicis exigi, quæ per consuetudinem contrariam non consueuerunt solui*, as *Couarruias* sayes; and to that purpose was an Edict <sup>e</sup> of their *Charles* the first (Emperor the fifth) at *Toledo* in *M. D. XXV.* and another like of his at *Madrid* about three yeers after, and before foure yeers were

<sup>c</sup> *Prælis quæst.*  
55.

<sup>d</sup> *Alfonso de Azue-do in Reg. Consuetud. lib. 1. tit. 5. l. 5.*

<sup>e</sup> *Couarruias. Var. Resol. lib. 1. c. 17.*

were thence past, at *Segovia*, and another at *Villadolid*. And vpon these oftentimes (sayes *Alfonso de Azuvedo*) Writs of Prohibition go out to the Ecclesiasticall Iudges, that proceed *super nouitate*, to forbid that *similes non permittant nouitates*, & *processum causæ Regio ipsi senatui originaliter mittant*. Which agrees with the verie words of the Ordinances <sup>f</sup>, that speak of *Nouedades* in exaction of Tithes against custome. And one speciall vse is there, that the Kings giue their 8 Personall Tithes to their own Chaplains attending on them.

<sup>f</sup> Recopilacion de las leyes por mandado de Philip. 2. lib. 1. tit. 5. l. 6.

<sup>g</sup> Partida 1. tit. 20. l. 11. & the Lopez

VIII. Neither hath the Canon Law wrought otherwise in *Italie*, but that there also particular Customes, as well of *Non Decimando*, as in the *Modus*, are frequent. *Multis Italiae locis* (sayes *Caietan* <sup>h</sup>) *contingit ex consuetudine*, that nothing at all is paid. And so is the practice there, for the most <sup>i</sup> part, at this day. the Parish Priests beeing sufficiently maintained by Manse and Glebe, and the reuenues that are in some places paid, as according to a *Modus*. And of the *Italians* and others, where like Customes were, *Aquinas* thus; <sup>k</sup> *Haud laudabiliter ministri Ecclesie Decimas Ecclesie requirunt, vbi sine scandalo requiri non possint propter desuetudinem vel propter aliquam aliam causam*. In *Venice*, sayes <sup>i</sup> *Panormitan*, *non in vita sed in morte solvuntur Decime personales de omnibus mercantijs iocalibus & alijs mobilibus*. And in the whole Seigniorie

<sup>b</sup> Ad 2. 2. q. 37. art. 1. sic & Ioh. Blaur ad 3. sent. 37. dist. 36. quæst.

<sup>i</sup> Relation of the Religion used in the West parts,

§. 39.

<sup>k</sup> Vide si placet *Henric. Barthe ad eam. de dec. c. 7. tenent. Et Anton. in summa part. 4. tit. 11. cap. de Decimis. l. Ad c. in aliquibus tit. de Decimis.*

m *Francisc. Mo-*  
*baldu in part. 1.*  
*Confil. 46, num. 5.*  
 edit. l. Baptiste  
 Casati.

n *Maria Auguſt.*  
*ſola ed. diſt. part. 1*  
*Confil. 19. 50. &c.*

o *Conſtit. Sicul.*  
*lib. 1. tit. 7.*

p *Gl. & Poſſimi-*  
*tas. alij item ad*  
*c. in aliquibus tit.*  
*de Decimis.*

of *Venice*, as my Autor <sup>m</sup> deliueſ, no Pariſh Church hath through that name *Decimas ſeu ius Decimandi*, but only another Stipend or *Quarteſum* (as they call it) *de poſſeſſionibus ſeu terris conſiſtentiſibus intra confines eorum curæ*. Neither haue *Infeodations* of Tithes into Lay hands been leſſe known in *Italie*, then elſwhere. For example, you may ſee the <sup>n</sup> caſe of the *Muij*, a Noble Familie of *Piacenza*, who had by immemoriall preſcription and confirmation by Bulls, an ancient Infeudation of all Tithes growing in the Territorie of *Verano*, within the Dioceſe of *Piacenza*.

By the <sup>o</sup> Ordinance of *Frederique* the ſecond, about M. C C. X X. in the Kingdomes of *Naples* and *Sicily*, a command is, That of all profits belonging to the Crowne of thoſe Kingdomes, a whole Tenth ſhould be paid, and that euery ſubie& ſhould truly pay all ſuch Tenths as had been uſed to be paid in the time of *William* King of *Sicilie*. *Subiectis* (are the words) *noſtris indicimus, vt Decimas quas de feudis & bonis ſuis anteceſſores eorum prædicti Regis Guilielmi tempore præſtiterunt, venerabilibus locis, quibus Decimæ ipſæ debentur, cum integritate perſoluant.*

In *Germanie*, the Canoniſts note a Cuſtome, that *P pro Decimis ſoluunt certas meſuras ſiue Coloni aliquid recolligant, ſiue non*. And this by their Law they allow, becauſe it ſtands indifferent, whether the Church loſe by it, or no. but alſo, ſome Lay men take Tithes of new improve-  
 ments



ments by right of their Lordships. *Status Imperij seculares* (sayes a Judge of the Imperiall Chamber) *Decimas Noualium percipere iure Territorij possunt*. Which the Clergie complained against, in a Diet at *Norimberg*, but in vaine. And of those Tithes, Infeodations are there made, at the pleasure of the owners, into Lay hands. Which was so in practice there also anciently, as is witnessed by an old Canonist, that liud aboue CCC. LX. yeers since; where disputing the question, *Vtrum Laicus possit sine peccato Decimas percipere*, and bringing the ordinarie Authorities for the negatiue part, he tels vs, both for *Germanie* and other Countries, in these words, *In contrarium potest induci generalis consuetudo in Hispania & Francia & Burgundia & Alemania in plerisque locis*. And in the Countie of *Flanders* an Edi&t was made by *Charles* the fift, dated at *Malines* in M. CCCC. XX. which commanded, that no Clergie or Lay man pretending right to Tithes, should exact or sue for other *Nouuelles Dismes aultres qu'ilz & leur pr. decesseurs ont accustume prendre & auoir passe quarante ans & audeussur*. but that they should rest content with what was due only, according to the former vse of payment, sauing in case of new improuements, and such like, as it was explained by another Edi&t some ten yeers after. both together are the same almost as our Statute of 2. Ed. 6. And in the Generall Coun-

q. Thomas Misthaci  
in lib. de Terris.  
Conclu. 49.

r. Zasius de feud.  
p. 4. & Vultius  
de Feudu, lib. 1.  
cap. 5. §. 13.

f. Holstenf. in  
summa. tit. de Dec.  
num. 13.

f. Ordinationes in  
Flandren Bonif.  
3. Rubric. 12.

cell of *Lateran* of M. C C. XV. a relation is of some Nations, who although Christians, yet *secundum suos ritus Decimas de more non solvunt*; and, that other men leased their Land to them, because in regard of no Tithe being paid by them, the greater rent might be reserved; against which, remedie is there provided. The words are, *In aliquibus regionibus quedam permixtae sunt gentes quae secundum suos ritus Decimas de more non solvunt, quamvis censeantur nomine Christiano, &c.* Whereupon *Innocent* the fourth, that might well know the meaning of the Council, living so neer it, notes that the Christians, who by their own customs did not pay, were *Greeks, Armenians*, and the like. and \* *Antoninus* expressly remembers the generall non payment of them in the Eastern Church as a thing not to be censured to be against Gods Law. Neither indeed haue I met with any Canon Law of all that Church that euer commanded any thing touching Tithes.

\* *Suumus* part. 4.  
tit. 11.

Among the Laws of *Hungarie*, we find, *Decimas<sup>a</sup> non solvunt Nobiles de proprijs terris*, and *Decimas non solvunt Rasciani, Rutheni, Valachi*, and *Decimas non solvunt Iudices propter laborem eorum circa decimandum*. although for other persons generally they haue strict Laws for payment of them.

<sup>a</sup> In *Enchirid.*  
*Artic. Decret. Regni. Hungar.*  
*Sambucus cotto.*

<sup>b</sup> *T. Herbert in Stat. Poloniae lib. D. & Jacob. Prilassius leg. Polon. lib. 12 cap. 4.*

In the Statutes of *Poland*, it appears that <sup>b</sup> about M. C C C. L X X. vnder *K. Cazimir* the second,

second, the Clergie (especially for the Diocese of *Cracow*) made diuers Laws (with his consent) vpon great differences about the paying of Tithes. One in speciall is, that Tithe must be paid of all that increases through the labour of the Plough, *exceptis Rapis, papauere, caulibus, cepis, allio, & quæ his sunt similia in hortis.* and *Si quis ligonifando plantauerit, Decima ab eo nulloatenus exigatur.* Some other particulars they haue about paying Tithe of Hemp and Flax (which happens somtime to be more, somtime lesse then a Tenth; because the certaintie is only from the number of beasts vsd to the plough) and of other things. whence it appears that the vse of Tithing there is not consonant to the Canon Law. And *Theodor Zauake* deliuiers it for a Law of this Countrie, that *Decimæ exteris vastatis accipi non debent*, which I think is to be referd to a thirtie yeers libertie of non payment giuen especially by *Bodantza* Bishop of *Cracow*, to such as were Tenants of Lands lately wasted by the *Lituanians* and *Tartars* which is declared in the Law, remaining at large in the Collections of *Herbort* and *Prilufus*. whither for more particulars I refer you.

In the Laws of *Suetbland* and *Gothland*, the Text<sup>e</sup> is, *Decimæ separentur & reponantur in agro, quarum tertiam partem suscipiat presbyter, & de reliquis duabus partibus capiat Ecclesia tertiam partem.* which I vnderstand so, that the Par-

son

c. Ragwald. De c.  
mendis de iure Ec-  
clesiasticis, lib. 1.  
cap. 7.

son is to haue all sauings a third part out of the two parts, which were to be imployed on maintenance of the Church.

d Statut. Deuod. 3  
cap. 11. § 3.

In *Scotland* by a Law <sup>d</sup> of *Dauid* the second about M. C C C. XL. it was constituted that no man should hinder the Clergie in disposing Tithes: *Sic quod suis Decimis possint pacifice & cum integritate gaudere, sub pena Excommunicationis, quoad Clerum. & Decem librarum penes Regem.* And Tithes there, haue been (and in many <sup>e</sup> places are paid) Parochially, yet also granted, altered, and disposed of by <sup>f</sup> positive Law as in other Countries. in the late plantation of new Churches ordaind by the last Parliament <sup>g</sup> there, manse and glebe and vitaille are assigned for maintenance to the Rectors, but not Tithes. And after the Statut of *Annexation* in the eleuenth Parliament of our present Soueraign, whereby Church reuenues (sauing Parochiall Tithes, Manse and small glebe, and some other speciall possession) were resumed to the Crown, an Act was made in the Parliament <sup>h</sup> following against a kind of infeodations (which they call *erectiōs* of *temporalities* and *teindes* of *Kirkland* into *temporall Lordships*, sauing such as had been before erected. And for the particular course of setting out payment of Tithes some speciall Lawes of late time they haue in *Scotland*, and in the other States before spoken of. but they belong not so much hither, being  
not

e Vide *Parl.* 23,  
*Iac* 6. art. 9.  
f Vide *Parl.* 9.  
*Iacob* 6. & 11.  
*statut.* cap. 39.

g *Parl.* 23. *Iac* 6.  
art. 3.

h *Parl.* 11. *Iacob*.  
6. cap. 119.

not of the essentiall part of the practice of payment nor of the receiued right of Tithes. therefore I wholly omit them. One example of an Appropriation in *Scotland* may be here not vntimely added, which falls about the yeer M.CC. XC. and shews a kind of arbitrarie disposition (euen at that time) of Parochiall Tithes of lands lying there, in a conueyance of a lay mans made to the Monasterie of *Giseburn* in *Yorkeeshire*. The Grantor was that *Robert de Bruis*, afterward King, & one of the Ancestors of our Soueraign. The Originall thus speaks. *i* *Omnibus ad quos presens scriptum perueuerit Robertus filius Roberti de Brus Dominus Vallis Anandiae salutem in Domino sempiternam. Nouerit vniuersitas vestra me concessisse & presenti scripto confirmasse Deo & Ecclesiae Sanctae Mariae de Giseburn & Canonicis ibidem Deo seruientibus & seruaturis, Ecclesiam de Anand cum terris, Decimis, & possessionibus ad eam pertinentibus & Ecclesiam de Logmaban cum terris Decimis & possessionibus ad eam pertinentibus, & Ecclesiam de Kirkpatric cum Capella de Logan & omnibus suis pertinentijs & Ecclesiam de Rainpatric & Ecclesiam de Cumbarres & Ecclesiam de Gretenhowe cum omnibus pertinentijs earum, Tenendum & Habendum Deo & praefatis Canonicis & eorum successoribus liberè quietè & honorifice, Ita quod liceat eis perpetuis temporibus de Decimis praedictarum Villarum, liberè disponere & ordinare pro voluntate*

*i* Seruatur autographum in The-  
sauro Cottoniano

*sua, & cuicunque voluerint eas ad firmam dimittere dare vel vendere, & alio quocunque modo voluerint & vbicunque voluerint commodum suum facere sine Impedimento mei & heredum meorum & hominum nostrorum, &c.* The scale, in green wax, annex to it, hath impression of a Knight armed and mounted, as for present onser in the wars, & is circumscribed with *Esse Ferox vt Leo.*

How the Laws of *Ireland* stand for Tithes, is best seen in the Statuts of that Countrie of 28. *Hen. 8. cap. 17.* of dissolutions, and 33. *Hen. 8. cap. 12.* of payment according to ancient custom and recouerie of Tithes, after the dissolution, giuen into lay hands, in like manner as in *England.* And here may be no vnfit place to remember that ancient Law ordained by *Henrie* the third, within the Archbishoprique of *Dublin*, whereby it was commanded that euery man *non expectato mandato Regis vel assensu, de gurgitibus & Piscarijs, Ecclesijs in quarum Parochijs sunt predicti gurgites vel piscariæ, Decimas soluant. quia R. non vult in periculum animæ suæ, huiusmodi Decimas detineant.* We purposely omit particular mention of such of the reformed Churches, as in this last age haue brought their Ministerie to stipends, and altered almost all the former practice of Ecclesiastique policie. For the practice of payment, and other disposition of Tithes, and for the *Laws*, and *Opinions*, touching the right of them, thus much. But whateuer this

this Kingdom of *England* might haue specially afforded, for *Laws and practice of Tithing*, shall by it selfe, in its own singular order, be next deliuered.

## C A P. VIII.

*The Laws of England made in the Saxon mycel rýnode or ptenagemote, in Parliaments, and in the Councells here held either Nationall or Prouinciall, or by the Pope, for the due payment or discharge of Tithes in this Kingdom. Petitions or Bills in Parliament touching them, are inserted. all in their course of time.*

**M**OST of the *English Laws, Constitutions, and Bills in Parliament*, that are referud to this place and here collected, were originally written in *Saxon, Latin, or French*. and the *Saxon*, for the most part, were anciently (but it seems since the *Norman conquest*) turnd into a barbarous latin that yet better shews their meaning then a purer. Such as are found in *Latin* only I haue faithfully deliuered according to the Copies that gaue them. Neither durst I suspect that any Reader fit for the matter should need an Interpreter. no otherwise haue I done in what is of the old *French*; it can hardly be any thing but inexcusable sloth, that can trouble any Reader (that is fit also for the matter) in the



understanding it. But in regard the old *Saxon* is known at all to few, and that hardly any better interpretation of the Laws written in that language can be then the old barbarous Latin, I haue ioined alwaies (where it might be) both the *Saxon* and the *Translation*. To haue left out the originall, had prevented some freedom of the Readers iudgement, and tied it to the translators. to haue added no translation, had been as a purpose to haue troubled euen the fittest Readers with a strange tongue; which also to haue otherwise interpreted, had been but to enuie them the help of those Ancients (that had better means to know the interpretation of those Laws) and so make them looke only as through spectacles of mine new made. I was willing to giue all (as the course of the collection would permit) that herein might help to make a ground of free iudgement. yet also where I see cause of note I adde it, but refer all to able censure. The *Laws* and *Constitutions* thus succeed.

r Ms. in Biblioth.  
Cottoniana.

I. An ancient & collection of diuers *Canons* written about the time of *Henrie* the first, with  
 “ this inscription of equall age; Incipiunt ex-  
 “ cerptiones Domini Ecgberti Archiepiscopi  
 “ *Eburace* Ciuitatis, de iure Sacerdotali, *hath*  
 “ *these words*, Vt vnusquisq; Sacerdos cunctos  
 “ sibi pertinentes erudiat vt sciant qualiter De-  
 “ cimas totius facultatis Ecclesijs diuinis debite  
 “ offerant. *and immediatly follows*, Vt ipsi Sacer-  
 “ dotes

“dotes à populis suscipiant Decimas; & nomi-  
 “na eorum, quicunque dederint, scripta habe-  
 “ant, & secundum auctoritatem Canonicam co-  
 “ram testibus diuidant, & ad ornamentum Ec-  
 “clesiæ<sup>1</sup> primam eligant partem, secundam au-  
 “tem ad vsum pauperum atque peregrinorum  
 “per eorum manus misericorditer cum omni  
 “humilitate dispensent; tertiam verò sibi met  
 “ipsis Sacerdotes reseruent. If the credit of  
 this be valued by the inscription, then is it about  
 DCCC. L. yeers old. For, that *Ecbert* liud  
 Archbishop of *Tork* from the yeer DCC XLIII.  
 to DCC. LXVII. But the auctoritie of that Title  
 must vndergo censure. Who euer made it, sup-  
 posed, that *Ecbert* gathered that Law and the  
 rest ioind with it out of some former Church  
 Constitutions, neither doth the name *excerptiones*  
 denote otherwise. But in that collection som  
 whole Constitutions occur in the same syllables  
 as they are in the Capitularies of *Charles* the  
 Great, as that of *unicuique Ecclesiæ*<sup>m</sup> *vnus mans-*  
*que integer, &c.* and some others which could  
 not be known to *Ecbert* that died in the last yeer  
 of *Pipin* father to *Charles*. how came he then  
 by that? and how may we beleeu that *Ecbert*  
 was the autor of any part of those Excerptions?  
 vnlesse you excuse it with that vse of the midle  
 times which often inserted into one body and  
 vnder one name Laws of different ages. but ad-  
 mit that. yet what is *secundum Canonicam aucto-*

1 Vide *supr.*  
 cap. 6. §. 3.

m *Ansgis. lib. 1.*  
 cap. 91.

*ritatem coram testibus diuidant* ? The ancientest *Canonica autoritas*, for diuiding Tithes before witnesses, is an old Imperiall, attributed in some Editions ° to the XI. yeere of the reigne of *Charles* the great, being King of *France*, in others P, to the Emperour *Lothar* the first. But referre it to either of them, and it will be diuers yeers later then *Ecbert's* death. And other mixt passages there plainly shew, that whose soeuer the Collection was, much of it was taken our of the Imperiall Capitularies, none of which were made in *Ecbert's* time. Perhaps, the greatnesse of his name was the cause why some later Compiler of those Excerptions might so inscribe it, to gain it autoritie. for he was both brother to *Edbert* King of *Northumberland*, and the first also that, after *Paulinus*, restored the name of Archbishopricque, and the Pall, to *Torke*. And the heads of a Synod held in *Ecbert's* time, vnder King *Ethelbald*, and *Cuthbert* Archbishop of *Canterburie*, are yet extant; but not any expresse mention is found in them of Tithes, although most of the particulars of Church-gouernment are toucht there.

o *Est. Vol. 4.  
m. lxxij, cap. 7.*

p *Leg. Longobard.  
lib. 3. tit. 8.*

q *Centur. 8. cap. 9.  
pag. 583. edit. Basil.  
1567.*

II. The Autors of the Centuries q haue a Synod held in the yeer D.C.C.LXXXVI. vnder two Legats sent from Pope *Hadrian* the first with letters, for reformation and establishing of Church Laws, to *Offa* King of *Mercland*, and *Aelfswold* King of *Northumberland*, and to the

two

two Archbishops. the particulars of the Synod are related in an Epistle to the Pope from those Legats ( which were the first that had so come from *Rome* hither after *Augustine* ) wherein it is related, that *Gregorie* Bishop of *Ostia*, one of the Legats, went into *Northumberland*, and *Theophilact* Bishop of *Todi*, the other, to *Offa*, who with *Kenulph* King of *West-Saxonie*, called a Councell for the Southern part, as *Aelfwold* for the Northern. *Gregorie* sayes, That in the Northern parts *ad diem Concilij conuenerunt omnes Principes Regionis tam Ecclesiastici quam seculares*; and after many Institutions of Canon Laws “ there, the *XVII. Chapter* is, de *Decimis* dan-  
“ *dis* sicut in *Lege* scriptum est: *Decimam* par-  
“ *tem* ex omnibus frugibus tuis seu primitijs  
“ *defer*as in *Domum Domini Dei tui* Rursum  
“ *per Prophetam*: *Adfer*te, *inquit*, omnem *Deci-*  
“ *cimam* in horreum meum vt sit cibus in domo  
“ *mea*, & probate me super hoc, si non aperuero  
“ *vobis* cataractas cœli & effudero benedictio-  
“ *nem* vsque ad abundantiam, & increpabo pro  
“ *vobis* deuorantem qui comedit & corrumpit  
“ *fructum* terræ vestræ, & non erit ultra vinea  
“ *sterilis* in agro dicit Dominus. sicut sapiens  
“ *ait*: *Nemo* iustam *Eleemosynam* de his quæ  
“ *possidet* facere valet, nisi prius separauerit  
“ *Domino* quod à primordio ipse sibi reddere  
“ *delegauit*. Ac per hoc plerumque contigit vt  
“ *qui Decimam* non tribuit ad *Decimam* reuer-

“ titur.

titur. Vnde etiam cum obtestatione præcipi-  
 mus, vt omnes studeant de omnibus quæ pos-  
 sident Decimas dare; quia speciale Domini  
 Dei est; & de nouem partibus sibi viuatur & Eleemosynas tribuat. Et magis eas in abscondito facere suasimus quia scriptum est; cum facis Eleemosynam, noli tuba canere ante te.  
*The autoritie of this Canon, may be known out of what is there further added.* Hæc Decreta, beatissime Papa Hadriane, in Concilio publico coram Rege Ælswaldo & Archiepiscopo Eanbaldo & omnibus Episcopis & Abbatibus Regionis seu Senatoribus Ducibus & populo terræ proposuimus; & illi vt superius fati sumus cum omni deuotione mentis iuxta possibilitatem virium suarum, adiuuante supernâ clementia, se in omnibus custodire denouerunt, & signo Sanctæ Crucis in vice vestra, in manu nostra confirmauerunt, & postea stylo diligenti in Charta huius paginæ exarauerunt signum Sanctæ Crucis infigentes. *Then follow some subscriptions of Bishops,* Et His quoque saluberrimis admonitionibus, Presbyteri, Diaconi Ecclesiarum, & Abbates Monasteriorum, Iudices, Optimates, & Nobiles vno opere, vno ore consensimus & subscripsimus. *After this so concluded in the Northern state, the same Legat, together with Maluin and Pyttell, Embassadors from Ælswold, take with them all those Decrees and Canons, and goe*

to the Councell held vnder Offa for the Western  
 “ parts, Vbi (as the words are) gloriosus Rex  
 “ Offa cum Senatoribus terræ vnâ cum Archi-  
 “ episcopo *laenbercto* (some call him Lambert)  
 “ Sanctæ Ecclesiæ Dorouernensis (that is, of  
 “ *Canterburie*) & cæteris Episcopis Regionum  
 “ conuenerat, & in conspectu Concilij clarâ vo-  
 “ ce singula capita perfecta sunt, & tam Latine  
 “ quam Teutonicè (that is, in English-Saxon,  
 “ *which then was the selfe-same with Dutch or Ten-*  
 “ *tonique*) quo omnes intelligere possent, dilu-  
 “ cidè referata sint: qui omnes consona voce &  
 “ alacri animo gratias referentes Apostolatus  
 “ vestri admonitionibus (*the Legats so write to*  
 “ *the Pope*) promiserunt se diuino adminicu-  
 “ lante fauore iuxta qualitatem viriû promitissi-  
 “ mâ volūtate in omnibus hæc statuta custodire.

And Offa and his Bishops, Abbots, and some Princes subscribe with the Crosse to it. What Copie of this Synod the Centuriators had, or whence they tooke it, I find not. But if it be of good autoritie, it is a most obseruable Law to this purpose. being made with such solemnitie by both Powers of both States, of *Mercland* and *Northumberland*, which tooke vp a verie great part of *England*; and it is likely, that it was made generall to all *England*. In the relation of the Legats to the Pope, mention is of *Kenulph* King of *West-Saxonie*, his ioyning with Offa in

calling the Councell. but the confirmations of the Decrees haue no reference to him. But, by the way, if you examine it by storie and Synchronisme, *Kenulph* perhaps could not haue at all to do with it. For some of our old Monks expressely affirme, That in the second yeer <sup>r</sup> of *Brübric*, next successor after *Kenulphs* death, Pope *Adrian* sent his Legats in *Britanniam ad renouandam fidem quam prædicauerat Augustinus*. And that they then held their Synod at a place called *Cealchithe*. how could *Kenulph* be there then, as the Legats relate? Belecue the Monks as you will. but indeed, an exactnesse here is not easily extracted out of the disturbed times of our Chronicles. They talk also of a Synod held in *Wicanhale* for the North parts, a yeere or two after. Doubtlesse they intend this same that is extant in the Centuries; if at least it be of sufficient credit. Neither can it be suspected by any circumstance in the subscriptions; which being so many, might haue by chance soon got among them a character of falsehood, had it not been genuine. In the printed *Houeden*, *Gregorie*, one of the Legats, is called *Georgens*, perhaps for *Gregorius*. but my Ms. hath also *Georgius*. But if *Henry* of *Huntingdon* and *Roger* of *Houeden* giue vs the time right of the Legats coming hither, then is that mention of *Kenulph*, in their supposed Epistle to the Pope, a plaine character

*r. Henric. Hunting-*  
*don, lib. 4. pag. 197.*  
*& Reg. de Houed.*  
*p. 235. edit. Londin.*  
*sed vide etiã Reg.*  
*de Houeden. sub*  
*ann. 786. & A-*  
*shelwend. lib. 2.*  
*cap. 20. & Flor.*  
*Wigorn. sub ann.*  
*785.*



character of falsehood, or ignorance, in some transcriber; who also, in one place, hath *Oswaldus* for *Ælswaldus* King of *Northumberland*. But those which speak of that Synod of these Legats, seeme to suppose it extending through the whole Kingdome. See also *ð. VIII.*

III. In the <sup>r</sup> Laws made between K. *Alfred* and *Gutbrun* the *Dane* (to whom the Prouinces of *East-Anglia* and *Northumberland* were giuen to hold of the Crown) and renewd also between the same *Gutbrun* and K. *Edward*, sonne to *Alfred*, about the yeer D. C C C C. this occurs, *Gif þpa Teopunge forþeolo, gylde laþhlite mid Denum, pite mid Englum*, that is, as the old Latin Translation hath it, *Si quis Decimam contrateneat, reddat Laþhlite cum Dacis*, *Witam cum Anglis*. *Laþhlite* denotes the *Danish* common forfeiture; which, as it is thought, was in most offences XII. Ores (that was commonly XX. shillings, for XX. pence made an Ore commonly; and sometime, according to the variation of the Standerd, <sup>r</sup> XVI. pence was an Ore. But in *Oxfordshire* specially, and *Glocestershire* in *Domes-day*, XX. goe to an Ore) as the *English* common forfeiture, or the *Wite*, was XXX. shillings. The occurrence of these two names, is frequent in the *Saxon* Laws; and it may seem by this, that some other Law preceded for the payment of Tithes, or els that the right of them

<sup>r</sup> Vide *Fad. Eds.*  
*ward, & Guthrum*  
*edit. Lambard.*  
*cap. 6.*

<sup>r</sup> Vide *Regist. Bur-*  
*ton. apud Camden.*  
*in Belg. pag. 186.*  
*edit. Læ.*

was otherwise supposed cleer. For the autoritie of this and the rest comprehended in those of *Alfred* and *Guthrun*, obserue that in their title; 7 Ða witan eac Ðe ryppan wæron, oæt 7 Unreldan 7 realk genwodon 7 mid gode gehyhton, that is, and the Wisemen (or the Baronage) of succeeding times very often renewed that Councell of theirs, and in *bonum adduxerunt*, as in the old Translation those last words are turned.

IIII. It is reported of King *Ethelulph*, that in the year D. CCC. LV. *Decumauit* (as *Ethelward* writes) *de omni possessione sua in partem Domini & in uniuerso regimine sui principatus sic constituit*. The words of his Charter, whereby he did it, are, *Cum Concilio Episcoporum ac Principum meorum Consilium salubre atq; unisforme remedium* (hee means remedie against those miseries which the *Englisb* had endured by *Danish* irruptions) *affirmantes consensum, ut aliquam portionem terrarum hereditariam antea possidentibus omnibus gradibus siue famulis & famulabus Dei Deo fruentibus, siue Laicis miseris semper Decimam* <sup>a</sup> *manjonem ubi minimum sit, tum Decimam partem omnium bonorum in libertatem perpetuam donari Sanctæ Ecclesiæ dijudicauit, ut sit tuta & munita ab omnibus secularibus seruitutibus &c.* So is it reported in the Abbot of *Crowlands* Historie, and varies not much in *William* of *Malmesburie*, and *Nicholas* <sup>b</sup> of *Glocester*

<sup>a</sup> i. *hydum, stu-*  
*miliam.*

<sup>b</sup> *Ms. in Biblioth.*  
*Cottoniana.*

cester, who both haue it also at large. But in *Mathew of Westminster*; no other *Decima* is mentioned in it, then *Decima terre Mee*. Out of the corrupted Language, it is hard to collect what the exact meaning of it was. How most of the Ancients vnderstand it, is best known by the words wherein they summe it. *Ingulphus* thus of it; *Omnium Prælatorum ac Principum suorum qui sub ipso, varijs Prouincijs totius Angliæ præerant, gratuito consensu tunc primò cum Decimis omnium terrarum ac bonorum aliorum siue cattallorum vniuersam dotauit Ecclesiam Anglicanam per suum Regium Chirographum*. And hee tells vs further, that *Æthelulph*, in the presence of his Baronage, at *Winchester*, offerd the Charter vpon the Altar, and the Bishops receiued it, & sent it to be published in euery Parish Church through their Dioceses. In *Florence of Worcester* it is in these words, abbreviated. *Æthelulphus Rex Decimam totius Regni sui partem ab omni Regali seruitio & tributo liberauit, & in sempiterno graphio in Cruce Christi pro redemptione anime sue & antecessorum suorum vni & trino Deo immolauit*. So also *Roger of Houeden*. An old *French* fragment of the *English Historie* sayes, that hee *dismaist la dime bide de tute Westsaxe*, and that it was *pur pestre & veestre les pouures*. The old Archdeacon of *Huntingdon* thus; *Totam terram suam ad opus Ecclesiarum decumauit propter amorem Dei & redemptionem*

y. *Ms. ad calcem*  
*Nich. Gloss. ex*  
*Bibl. Cotton.*

2 In Bibl. Cotton.  
Scapud P. C.  
Thos. Allen O. 100.

*demptionem sui.* And in the rythmes of <sup>2</sup> *Robert*  
of *Glocester.*

*The King to holye Chirche thereafter euer the  
more drough,  
And tithed well all his lond, as he ought, well  
enough.*

a Ms. in Biblioth.  
Cottoniana.

If we well consider the words of the chiefest of  
these Ancients, that is, *Ingulphus*, we may conie-  
cture that the purpose of the Charter was to  
make a generall grant of Tithes payable freely  
and discharged from all kind of exactions vsed  
in that time, according as the Monk of *Malmes-*  
*burie*, & <sup>2</sup> *John Pike* in his supplement of the  
Historie of *England*, expresse it. *Decimam*, say  
they, *omnium hydarum infra regnum suum à tribu-*  
*tis & exactionibus regijs liberam Deo donauit.*  
that is, granted the Tithe of the profits of all  
Lands, free from all exactions. for, the granting  
of the tenth part of the Hides or Plough-lands,  
denotes the tenth of all profits growing in them,  
as well as *Decima acra sicut aratrum peragrabit*,  
which is vsed for tithing of the profits, in the  
Laws of *K. Edgar*, *Ethelred*, and *Knout*, and ac-  
cordingly also is this, of *Ethelulph*, related in  
the *Saxon*<sup>b</sup> *Chronicles* of *Peterborough*, *Can-*  
*terbury*, and *Abingdon*. he did tithe hyr landes o-  
uer all hyr pice gode to lofe &c. as the words are.  
that is, *his Lands ouer all his Kingdom &c.* and  
doubtlesse *Ingulphus* no otherwise vnderstood it  
then of perpetuall right of Tithes giuen to the  
Church,

b Ms. in Bibl.  
Cottoniana.

Church, where he remembers it by *tunc primo cum Decimis &c.* So that the tithe of prediall or mixt profits was giuen, it seems, perpetually by the King with consent of his States both Secular and Ecclesiastique, and the tithe of euery mans personall possessions were at that time also expressly included in the gift, because (it seems) before that, the payment of all Tithes had commonly been omitted. The ancientest of Writers that hath the Charter whole is that *Ingulphus*: but questionlesse it is much corrupted especially in that of *portionem terrarum hereditariam antea possidentibus omnibus gradibus.* for what may that signifie? But in *Matthew of Westminster* it is farthest from deprauation of language; where, after *portionem*, follows *terræ meæ Deo & Beatæ Mariæ & omnibus Sanctis iure perpetuo possidendam concedam, Decimam scilicet partem terræ meæ vrsituta &c.* the priuilege or libertie annexed to it is, that it should not be only free from all taxes and exactions vsed then in the State, but also from that *trinoda necessitas* (whereto all Lands whatsoeuer, were subiect although otherwise of most free tenure) by which they ment their *expeditio* or militarie seruice, *pontis constructio*, & *arcis munitio.* this freedom of that time you must it seems so interpret, that euery man was from henceforth to be valued in all Subsidies and Taxes according only to his nine parts of his Lands and profits; and the profits of the tenth being

c Vide, si placet.  
T. H. Honor. par. 2.  
pag. 301.

being due to the Church, were both in his and their hands hereby discharged from all paiments and taxes whatsoeuer. But should it be vnderstood only for a particular consecration to the Church of one time, and of the Land <sup>d</sup> it self to be possessed by the Clergie or emploied to other good vses of charitie, then had it no more due place here among the Laws of Tithes, then the storie <sup>e</sup> of *Robert Earle of Glocester* his giuing euery tenth stone (of his prouision for the building of a Towr neer to *Bristow*) to the erecting of a Chappell, or *Edward* <sup>f</sup> the Confessor his building *Westminster Abbey* with the tenth of one yeers reuenue, or *Offa's* giuing the Tithe of his estate to the Clergie and the Poor, or the like. But I conceiue it as is before declared. It is fit to adde here also another of *Æthelulph's* grants or Constitutions by the Parlamentarie consent of that time, made to like purpose; and that at large, because it is not in any published autor. In the <sup>h</sup> Chartularies of the Abbey of *Abingdon* it occurs in the one, with the title of *Priuilegium Æthelwulfi Regis*, in the other with *Quomodo Adelwulfus Rex dedit Decimam partem regni sui Ecclesijs*. then follows the Charter or Constitution. *Ego Æthelulf gratia Dei Occidentalium Saxonum Rex in sancta ac celeberrima Paschali solennitate, pro mea remedio anime & regni posteritate & populi ab omnipotenti Deo mihi collati consilium salubre cum Episcopis, Comitibus,*  
&

<sup>d</sup> Sic intelligit, ni fallor, *Foxus Hist. Eccles. Angl. pag. 183.*

<sup>e</sup> Camden, in *Belgis, fol. 179.*

<sup>f</sup> Idem, *pag. 308. in Trinobantibus.*

<sup>g</sup> *Polydor. Virgil. Hist. Angl. lib. 4.*

<sup>h</sup> *Mss. in Bibl. Cotton.*

& cunctis Optimatibus meis perfeci vt Decimam  
 partem terrarum per regnum nostrum non solum  
 Ecclesijs darem, verum etiam & Ministris nostris  
 in eadem constitutis in perpetuam libertatem habere  
 concessimus, ita vt talis donatio fixa incommutabi-  
 lisque permaneant ab omni regali seruitio & omni-  
 um secularium seruitute absoluta. Placuit autem  
 Ælthano Episcopo Scirburnensis ecclesie & Swi-  
 thuno Wentane Ecclesie Episcopo, & Ducibus  
 communiter. Hoc autem fecimus in honorem Do-  
 mini nostri Ihesu Christi & beatae semper Virginis  
 Mariae & omnium Sanctorum & Paschalis festi  
 reuerentiam, vt Deus omnipotens nobis & nostris  
 posteris propitiari dignetur. Scripta est autem hac  
 Cartula anno ab incarnatione Domini nostri Ihesu  
 Christi DCCC. l. iiii. indictione ii. die Pa-  
 schali, in Palatio nostro qui dicitur Wiltun. Qui  
 autem augere voluerit nostram Donationem augeat  
 omnipotens Deus dies eius prosteros. si quis vero  
 minuere vel mutare praesumpserit, noscat se ante  
 tribunal Christi redditurum rationem nisi prius sa-  
 tisfactione emendauerit. †. Ego Æthelwlf Rex †.  
 Ego Ælthstan Episcopus †. Ego Swithun Episco-  
 pus †. Ego Wlffas Abbas †. Ego Werferd Ab-  
 bas †. Ego Etlhered & ego Alfred filij Regis con-  
 sensimus. the ancientest hand wherein this is  
 writen in the Chartularies, is of about Henry the  
 second his time. and for the credit of it, you  
 must relie vpon those Chartularies. It differs in  
 date both of place and time from the other. this



is dated at *Wilton*, that at *Winchester*. this in DCCC. L I V. the second Indiction at Easter. that DCCC. L V. and in some, the fourth Indiction, and in others, the third in Nouember. such a difference of Indictions may well be, if the Autors that deliuer it, added that note for the time that they conceiud it to be made in, not for the very Characters of the Date of the Originall instrument. for, Nouember falling in the fourth Indiction Imperiall, may be of the third Indiction Pontifical. the one beginning in September, the other in December following. that difference is in the relations of it between *Florilegus* and the Abbot of *Crowland*. and the Abbot perhaps reckond by the Pontificall Indictions, and the other Monk by the Imperiall. if at least their Copies be not corrupted. But whereas in *Malmesbury* the date of that first Charter is DCCC. X L I V. *Indict. IV. V. Nonas Nouembris*. plainly it is false, neither could that Indiction be in the Character of the year DCCC. XLIV. which fell in the seventh Indiction.

*1. lib. in Biblioth.  
Cottonianay cap. 65  
- de scripturis,*

V. In a Volume <sup>i</sup> that belonged to the Abbey of *S. Augustines* in *Canterbury*, titled *Statuta Synodorum*, written in a hand of about DCCCC. yeers after Christ, or somewhat more, one Paragraph is *de Decimis*. But the Mosaicall commandement (for few of the Iudicials of *Moses* are wanting in it) & a passage in *S. Angustine* are the only authorities brought for them. No

Coun-

Councell or positiue Canon is mentioned in it to that purpose; although for other things, *Synodus Romana*, *Synodus Auraicensis*, *Narbonensis*, and very often *Synodus Hybernensis* occur in it. The Autors vsed, by him that compiled it, are *S. Augustin*, *S. Hierom*, *S. Gregorie*, and *Isidore*, (which were in those midle times the <sup>k</sup> chiefe, almost the only Fathers of the Church that were read) and sometimes *Gildas* and *S. Patrike*. whence it may seem that it was collected by som Briton or Irishman. and certain Canons of that Abbot *Adomann* spoken of by <sup>l</sup> *Bede*, are annex to it. Neither did the Autor of it doubt but that he had all the Councells of credit that preceded him, as his own testimonie in his Preface iustifies. there, after a short relation of the IV. most known and generally receiued, of *Nice*, of *Constantinople*, of *Ephesus*, of *Chalcedon*, he addes : *Hæ sunt quatuor Synodi principales fidei Doctrinam plenissime prædicantes. sed & si qua sunt Concilia quæ sancti Patres spiritu & diuino pleni sanxerunt post istarum quatuor auctoritatem, omni manent stabilia vigore, quorum gesta in hoc opere condita tenentur.* But to the same Volume is ioind another Collection, with this inscription; *Incipiunt Pauca Iudicia quæ desunt de supradictis*, in which the old Canons of *Rome* (that is, the *Codex Romanæ Ecclesiæ*, or some other in the nature of it, which was receiud into these Northern parts, as a Director of the Church, in the

<sup>k</sup> Quod dicitur sa.  
e 4 ex Leuiti Epist.  
in Dyg. 20 cap. 1.

<sup>l</sup> Eccles. Hist. lib. 5.  
cap. 16.

in Protho eun-  
dem librum Ca-  
nonem, ait Theo-  
dorus Cant. Arch.  
in Concil. circa-  
ann. 670. apud  
Hertford celebra-  
to. Bed. Hist. Ec-  
cles. lib. 4. cap. 5.

eldest times of Christianitie here, as you may see in our <sup>m</sup> ancientest Church-storie) is cited, and diuers authorities out of those Fathers and a few of the elder Councells. But, no denominated Pontificall or Synodall is rememberd there for Tithes Only the Texts of *Moses* for Tithes, first Fruits, the first Born, and such more are numberd together; and then follows a Chapter *de Diuisione Decimarum*, with this declaration: *Lex dicit; ipsi Sacerdotes populi suscipiant decimas, & nomina eorum, quicquid dederint, scripta habeant & secundum auctoritatem Canonicam &c.* in the self same words as are before attributed to the Excerptions of *Ecbert*. The exact age of those *Statuta Synodorum*, appears not. But they were collected about *K. Athelstans* time. at least, then was the Copie that remains of them writen, as may be coniecturd alone (if other reasons failed) from the similitude twixt the Character found in them and that of the Text of the holy Euangelists, which King *Athelstan* caused to be fairly writen, and consecrated to *S. Cutbert*. That text with those *Statuta* are both yet preserued from the iniurie of time, among those inestimable monuments of that noble Knight *S<sup>r</sup> Robert Cotton*. For those *Pauca iudicia* that follow; they are of a later hand then the *Statuta*; but of what time, it sufficiently appears not. That *Lex dicit* in them may be referd to the Canon <sup>n</sup> related out of the Excerptions of

of *Ecbert*. but whence that Canon is originally, I haue not yet learned.

V I. King *Athelstan* ° about the yeer DCCCC XXX. by aduise and consent of the Bishops of the Land, made a generall Law for prediall and mixt Tithes, in these words. Ic *Æþelstane* cýning mid geþeahte *Wulfhelmes* mines hihbýrceoper. 7 oþra minra býrceopa bebeode eallum minum geþearfum ðuþh ealle mine rice (on þæs ðrihtænes nama. 7 ealra halgena, 7 for mine lufu) þ hi ænort mines agenes æhtes ðam teoþe geryllað. ge ðæs libbendes yrses. ge ðæs gearlice ystmes; 7 7 þ ilce gedo eac ða býrceopas heora gehwilepa. 7 eac mine ealdrmanra. 7 geþearfa; 7 ic wille þ mine býrceoper 7 geþearfa ðæs demas eallum ðe hio gehwyrman gebýraþ. 7 þ ilce to þam tide fulfremas ðe se hio settaþ. 7 þæs rie to ðam dæg ðæn beheaþdunge seint Iohannes þæs wulfhtes; which is anciently thus 9 turnd into Latine. *Ego Athelstanus Rex Consilio Wulfhelmes Archiepiscopi mei & aliorum Episcoporum meorum mando præpositis meis omnibus in toto regno meo, & præcipio (in nomine Domini & Sanctorum omnium & super amicitiam meam) ut inprimis de meo proprio reddant Deo Decimas tam in uiuente captali quam mortuis frugibus terræ. & Episcopi mei similiter faciant de suo proprio, & Aldermanni mei, & Præpositi mei. Et volo ut Episcopi & Præpositi mei, hoc iudicent omnibus qui eis parere debent, & hoc ad terminum expleant quem eis ponimus, i. decollatio S. Iohannis Baptiste.* and

o. *Leg. Athelst.*  
s. 11. a. Lambardo.

p. In Ms. Cottonianus inseruntur illic hæc uerba: sra man nightræ mæge. odder gemetan, odder getellan, odder pagan. i. in the iustest way that may be; either by measure, number, or weight. q. In Historia Iornalis Ms. in. Bibl. Cotton.

the example of *Iacob*, with a Text or two out of holy Writ and *S. Augustin*, is added to moue deuotion. That translation agrees wholly enough with the *Saxon*, sauing in those words *mortuis frugibus*; the *Saxon* being yeerly fruits, which also another \* Copie of this translation expresses by *ornotinis frugibus*, corrupted plainly from *hornotinis frugibus*, i. the fruits of one and the last yeer, or the yeerly increase. and perhaps some ignorant Monk finding *ornotinis*, and not vnderstanding it, because he would be sure to square it to his own abilitie of learning, made it *mortuis*. which kind of changing hath examples enough in bold but ignorant Criticisme. that which the old Translator calls *uiuens captale*, is, libbender *gyper* i. *liuing cattell*, in the *Saxon*; which hath often † ceap also for *chattels*, and sometimes specially for *liuing cattell*. but the old ‡ Latine of the *Saxon* Laws turns ceap also into *captale*, whence *cattalla* is like enough to haue descended. and the first stock of Cattell which by King *Ina's* \* Laws was to be giuen to Orphans, was called *prumtcol* in *Saxon*, but *primum captale* in the old translations. In *Brampton's* † Historie (which is full of the Laws of the *Saxon* times) after those constitutions of *Grateley*, part of which are in *Lambard's Archaerologia*, follows a thankfull acknowledgment to *K. Athelstan* for this Law of Tithes, in these words. “ Karissime; Episcopi tui de *Kent* & omnis *Kent*.

\* *Uet. Leg. abid.*  
311.

† *Ina Leg. cap. 37.*  
40. & 41.

‡ *In dicta historia*  
*Tornallensi.* 212.

\* *Cap. 38.*

† *D. J. Hist. Tor-*  
*nallesi.*

“ *Kentſiræ*, Thayni, Comites & villani tibi Do-  
 “ mino dulciſſimo ſuo gratias agunt, quod no-  
 “ bis de pace noſtra præcipere voluſti, & de  
 “ commodo Noſtro perquirere & conſulere ;  
 “ quia magnum opus eſt inde nobis diuitibus &  
 “ egenis. Et hoc incepimus, quantâ diligentia  
 “ potuimus, conſilio horum ſapientum quos ad  
 “ nos miſiſti. Vnde, Kariſſime Domine, primum  
 “ eſt de noſtra Decima, ad quam valdè cupidi  
 “ ſumus & voluntarij & tibi ſupplices gratias  
 “ agimus admonitionis tuæ.

VII. About D.C.C.C.C. XL. *Edmund*  
 King of *England* in a *Micelne ſynod*, that is, a  
 great Synod, or Councell, a kind of Parlament,  
 both of Lay and Spirituall men (which are ex-  
 preſſed by *godecundra* and *poplocundra*) held in *Lon-*  
*don*, made this \* Act. Teopungum ꝑe bebeodaþ æl-  
 cum Cþyrtenum men be hyr Cþyrtendome. ⁊ cyrc-  
 yſceat. ⁊ ælmeſfeoh; Giſ hit hya domnylle. ꝑy he aman-  
 rumod. Which is anciently y turned ; *Decimam*  
*præcipimus omni Chriſtiano ſuper Chriſtianitatem*  
*ſuam dare ; & emendent Cyrcyſceatum i. Ec-*  
*cleſiæ cenſum, & ælmeſfeoh i. Eleemoſynæ pe-*  
*cuniam. ſi quis hoc dare noluerit, excommunicatus*  
*ſit.* And all agrees with the Saxon, ſauing only,  
 that nothing answers to the word *emendent*.  
 That *Cyrcyſceat* is a Church-rent of Corn, or  
 the firſt fruits of Corn yearly in thoſe times, and  
 regularly payable at *S. Martins* day to the  
 Church <sup>z</sup> ; and is ſometimes written *Cureſcet* ;  
 ſome-

x *Leg. Edmund.*  
*apud Lambard,*  
*c. 2.*

y *In Diſt. Hiſt.*  
*Yornellett.*

z *Videſt. Ivo. leg.*  
*cap. 4. & 67. & a-*  
*pud. Madox. ſtat.*  
*lib. 2. c. 11. Canonis*  
*de. Epit. ad. Anglor.*  
*& Lambard. in ex-*  
*plic. verò. ſu. Pri-*  
*mitiæ. & Caruſi*  
*leg. c. 10. & Edgers*  
*leg. c. 2. & 3.*

sometimes otherwife. And in an old Ms. Exposition of Law-terms, occurs, *Cherchefonde, vne mesure de Ble que checun homme soleit enuoier a Seint Esglise en temps de Bretons*. Plainely, Church-Corn is vnderstood; and *Cyrksceat*, that is, Church-rent is the originall whence *Cherche-sonde* is there corrupted. And among Articles <sup>a</sup> inquirable by euery Escheator in 44. Hen. 3. about the Profits, Estate, Tenure, and Issues of the Kings Tenants, one is of *Cherebescot tam in blado quam in Gallinis, & in alijs exitibus*. It is *Circset* often in the book of *Domesday*. Where it is found belonging sometimes to Abbeyes, sometime to Parish Churches, sometimes to others. It was still as first fruits. And this old testimonie is for the antiquitie and continuance also of payment of it here. *Churchesetter*

<sup>b</sup> certam mensuram bladi tritici significat quam quilibet olim sanctæ Ecclesiæ die sanctæ *Martini* tempore tam *Britonum* quam *Anglorum* <sup>c</sup> : Plures tamen *Magnates* post *Normannorum* aduentum in *Angliam* illam contributionem, secundum veterem Legem *Moyse*, nomine primitiarum dabant, prout in breui Regis *Knuti* ad summum Pontificem transmissio continetur, in <sup>d</sup> quibus illam contributionem appellat *Chirchsed*, quia semen Ecclesiæ. But what the Autor meanes by that Letter or Brief of King *Knout*, sent to the Pope, I as little know, as why hee cites that for

autoritie

<sup>a</sup> *Annal. Monast. Burtonens. Ms.*  
apud V.C. Thom.  
Allen Oxoniens.

<sup>b</sup> *Fleta M. lib. 2.*  
cap. 47.

<sup>c</sup> *Supple solus-  
bani.*

<sup>d</sup> *L. quo.*



autoritie to proue what the Baronage did after the *Normans*. Indeed, an Epistle is extant, which *Knout* sent into *England* (by *Liuing Abbot of Tauistok*) as hee was taking his iourney home-wards from the Pope. and therein, mention is of this *Cure-sceet*. of any other I am yet ignorant. That *Aelmeſceoh*, or *Almes-money*, was the *Peeter-pence*, due yeerly at the first of August, by institution, as some will, of King *Ina*, as others, of King *Æthelulph*. And they were called also *Romeſceoh*, *Romercot*, *Heopþpening*.

e Apud G. Mal  
weſbur, lib. 2. c. 1

VIII. Of the same time, some Constitutions are extant, <sup>f</sup> made by *Odo* Archbishop of *Canterburie* (yet not, for aught appears by them, in a Synod) with this Preface, *Ego Oda humilis & extremus diuina largiente clementia, almi Præſulis & Pallij honore ditatus, quedam documenta omni Chriſticolâ non indigna, quæ à præcedentibus illuſtrium virorum Præceptis certiffima comperi, ad conſolationem Domini mei Regis ſcilicet Ætmundi omniſque populi excellenti Imperio eius ſubiecti, in iſta cartula, coadunare decreui. Vnde deuotiſſimè obſecro & clementiſſimè hortor audientum mentes vt ſi quando hæc recitanda audiant interius videlicet & in corde, frequenti meditatione plantent, & multiplici bonæ operationis munere ex eo fructum pacatiſſimum in tempore meſſis ſibi colligant. Primo capitulo præcipimus & mandamus vt Sancta Dei Eccleſia &c.* And ſo goes on with ſome particulars which belong to Church-

f Ms. compaſſ. in  
Vol. quod Codex  
Eccleſiæ Landau.  
diſcit in Bibl.  
Cotton.

discipline; the X. and last Chapter being only for Tithes in these words. X. *Capitulo mandamus & fideliter obsecramus de Decimis dandis sicut in Lege scriptum est. Decimam partem ex omnibus frugibus tuis seu primitiis deferas in domum Domini Dei tui. Rursum Prophetas, Afferte,* & inquit, *omnem Decimam in horreum meum, ut sit cibus in domo mea & probate me super hoc si non aperuero vobis cataraclas cœli & effudero benedictionem usque ad abundantiam & increpabo pro vobis qui comedit & corrumpit fructum terræ vestræ. & non erit ultra vinea sterilis. Vnde & cum obtestatione præcipimus ut omnes studeant de omnibus quæ possident dare Decimas; quia speciale Domini Dei est; & de nouem partibus sibi viuant & Eleemosynas tribuant.* Where note, the syllables are of that which in the Centuries is referred to an *English* Councell of D. CC. LXXXVI. before in §. II. For this of *Odo*, although no expresse Occurrence denote, that it was in a Councell; yet you may much incline to beleue it was in one, if you compare it with <sup>b</sup> what you find in the Monk of *Malmesburie* of him.

I X. King *Edgar* about the yeer D. CCCC. LXX. mid his pitea geþeahte, that is, with the aduise and counsell of his Wisemen, or Baro-  
nage, ordained, That the Church should enioy all her Liberties, 7 <sup>i</sup> man agýfe ylce alc teoþunge to þam ealdan mynastre ðe reo hýpnesse to hýrfe; 7 7i þonne swa geleafte. ærþen of ðægnes inland. ge of neahtland. swa his fullh gea;

g. Malach 3.

h. De g. 2. Pontif.  
lib. 1. fol. 113. a.

i. Eccl. Edgar cap.  
1. 2. 3. equal  
LXXXVI.

2. Gif hƿa ðonne ðegna rý. ðe on hƿ boclande cýrican habbe ðe legeſtore on rý. geſýlle he ðonne ðriodan ðal hƿ agenſe teoþunge into hƿ cýrican;

3. Gif hƿa cýrican habbe ðe legeſtore on ne rý. ðonne do he of ðam nýgan ðalum hƿ ſnece ꝥ ꝥ he ſille;

4. And rý ælcne geoguþe teoþunge geſaſte be Pentecosten; 7 þa eorþ ſaſtma be Emnihte;

5. Gif hƿa ðonne þa teoþunge geſaſtan nelle ſƿa ge-cƿaden habbaþ. ſaſe ðaſ Cýninges geſeƿa to. 7 þaſ Biſceop. 7 þaſ mýnſtres maſſereſceot. 7 niman unþanceſ ðone teoþen ðal to ðam mýnſtne ðe hit to ge-býrþuge. 7 tæcan him to þam niȝoþon ðal; 7 to ðale mon þa eahta ðalaſ on tþa. 7 ſo ſe k hlaforð to healþan. to healþan ſe biſceop. rý hit cýninges man. rý hit ðegener; that is, in the old <sup>1</sup> Latine Copies :

1. Et Reddatur omnis Decimatio ad Matrem Ecclesiam cui Parochia adiacet, de terra <sup>m</sup> Thainorum & Villanorum, sicut <sup>n</sup> aratrum paragrabit.

2. Si quis Thainorum sit qui in feodo suo Ecclesiam habeat ubi cæmeterium sit, det ei tertiam partem Decimæ suæ.

3. Si non sit ibi atrium (but the Saxon hath here the same word as before for cæmeterium, that is, legeſtore) det, ex suis nouem partibus, Presbytero, quod vult.

4. Et omnis Decimatio Iuuentutis reddita sit ad Pentecosten; & Terræ frugum, ad Æquinoctium.

k Land  
hlaforð  
in MS.

1 Arud Translat  
in Hist. bernad.  
fol. 4. in Bishop.  
Cotman.  
m. 1. Baranum seu  
hic d. translatum.  
n. Vide infra  
S. IX. & X.

5. Si quis Decimam dare sicut diximus noluerit, adeat Præpositus Regis & Episcopi & Sacerdos illius Ecclesiæ, & reddant Ecclesiæ cui pertinebit Decimam suam; & Nonam partem dimittant ei qui Decimam suam detinuit, & octo partes in duo diuidantur. dimidium Domino, dimidium Episcopo; Sit homo Regis, sit homo Thaini. This Latine agrees well enough with the Saxon; although in this last *ð. si quis*, for *Episcopi* ° *Sacerdos*, Lambard hath & *Episcopus* & *Sacerdos* illius Ecclesiæ &c. But whereas the Translator vses the word *Ecclesia* only for Church; in the Saxon, that which he calls *Matrem Ecclesiam*, is denoted by ealban mynre, and that *Ecclesia*, in *ð. 2. si quis Thainorum*, by Cýpican; whence, our word Kirk, or Church, is framed. For the difference of Church and Minister here, somewhat where anon wee speak of Parishes of that time.

X. A Councell or a kind of Parliament held vnder King *Ethelred*, by the aduise of his two Archbishops, *Elfpbeg* and *Wulfflan*, (about the yeer M. X.) is yet extant, wherein Laws are for Tithes. But because it remains only a Manuscript of about the time of the Norman Conquest, the Preface of it shall be here first noted, that thence the autoritie of it may be the better vnderstood. It is inscribed with *P Incipiunt Synodalia Decreta*. then begins with; *Quodam tempore contigit vt Regis Æthelredi edicto*  
 “ con-

o Vide §. XII.  
 & XVII.

p Ms. in Biblioth.  
 Cottoniana. in vo-  
 lumine quo Ordo  
 Coronationis qui  
 quo Saxonico in  
 vsu erat, narratur.

“ concrepante, Archipræsulumque *Alseagi* &  
 “ *Wulffhani* hortatu instigante, vniuersi Anglo-  
 “ rum Optimates die Sancto Pentecostes ad lo-  
 “ cum ab indigenis *Eanbam* nominatum acciti  
 “ sunt conuenire. Collecto itaque ibidem Chri-  
 “ sticolarum cœtu venerabilium quamplurimo-  
 “ rum de Catholicæ cultu Religionis recupe-  
 “ rando, deque etiam rei statu publicæ repa-  
 “ rando vel consulendo plura & non pauca vt  
 “ pote diuinitus inspirati ratiocinando sermo-  
 “ cinabantur. *Then follows some Constitutions*  
*about Monks, Abbots, Canons, and other of the*  
*Clergie. After which, the Councell goes on with,*  
 “ Post hæc igitur Archipontifices prædicti Con-  
 “ uocata plebis multitudine collectæ, Regis E-  
 “ dicto suprascriptæ omniumque consensu Ca-  
 “ tholicorum omnibus communiter prædica-  
 “ bant vnum Deum colendum esse debere, Pa-  
 “ trem videlicet &c. *And diuers Canons suc-*  
 “ *ceed; and among them occurs,* Nec Ecclesiæ  
 “ antiquitus constitutæ Decimis vel alijs pos-  
 “ sessionibus priuentur ita vt nouis Oratorijs  
 “ tribuantur; *which very words are found in an*  
*elder Councell of Mentz, and in the Imperiall*  
 “ *Capitularies. Then immediatly follows,* Deci-  
 “ mationes Frugum & Vitulorum & Agnorum,  
 “ necnon & Aratrales Eleemosynæ, Ecclesiasti-  
 “ caque munera Domino per singulos annos  
 “ temporibus rependantur congruis. Eleemo-  
 “ synæ videlicet Aratrales quindecim diebus

exemplar item  
Saxonum repe-  
ritur in Codice  
vetustiss. Le. un.  
Sax. in scriptis lan-  
data Bibliotheca.

Manuscr. Leg.  
Sax. in Libr.  
Constantiana.

“ post Pascha peractis; Vituli quoq; & Agnicu-  
“ li Decimales erga Pentecosten, Frugum verò  
“ terræ Decimationes circa omnium festiuita-  
“ tem Sanctorum Ecclesijs persoluantur oppor-  
“ tunis. To it, is ioind the most part of it 9 in  
Saxon. but that Preface is wholly therein wan-  
ting. neither doth any thing in the Saxon an-  
swer to that, *Nec Ecclesie antiquitus constituta*  
Etc. But those Tithes are there reckond amoong  
goder gesughtar, that is, *things due vnto God.* and  
the Saxon text for them is; *geogofe teofunge be*  
*Pentecosten. 7 eopð pyrtma be calna halgenamā-*  
*ran,* that is, *the Tithe of yong cattell is to be paid*  
*at Whitsontide, and of fruits of the earth at Al-*  
*hallows* and according to this, in an old Saxon  
collection of Christian dutie, *Ælc man* (saies the  
Autor) *teodu ga gelyfte mid mhte,* that is, *Let*  
*euery man pay his Tithes iustly.* Those *Aratrales*  
*Eleemosynæ* were called *rulh almeſſan,* that is,  
*Plough-almes*; which was a peny to be paid of  
euery plough-land. and the *Ecclesiastica munera*  
were only the first fruits of Corne paid at S.  
*Martins* day; whereof before ð. VIII.

XI. In some Laws of K. *Ethelred* remain-  
ing in Abbot *Brampton* his Historie, we read.

“ Omnis Thainus Decimet quicquid habet.  
“ and *Præcipimus vt omnis homo super di-*  
“ *lectionem Dei & omnium Sanctorum det*  
“ *Cyricſceatum & rectam Decimam suam sicut*  
“ *in diebus antecessorum nostrorum fecit quan-*

Manuscr. Leg.  
Sax. in Libr.  
Constantiana.

“do melius fecit, hoc est, sicut aratrum peragra-  
 “bit, decimam acram, & omnis consuetudo  
 “reddatur super amicitiam Dei ad matrem no-  
 “stram Ecclesiam cui adiacet, & nemo auferat  
 “Deo quod ad Deum pertinet, & prædecesso-  
 “res nostri concesserunt. The inscription of  
 those Laws mongst which these are found, is,  
*Hæc instituerunt Ethelredus & Sapientes eius a-*  
*pud Habam.* By this, and that of *Edgar* before  
 cited, it appears that the Tithe of euery tenth  
 acre according to the order of tithing the whole  
 Farme, was to be paid to the Church. which al-  
 so is made more plain in the next Law of King  
*Knout.*

XII. Gelæste man (are the words of one  
 of *K. Knouts* Laws made about M. XX.) godes  
 genihtra æghwile georne nughtlice georne; þæt is ful-  
 hælmege fytene niht oðen Eastan. 7 gegoðe teo-  
 þunge be Pentecosten. 7 eoð þætma be ealra hal-  
 gena mærran; 7 gif hwa þonne þa teoþunge gelæstan  
 nælle. swa se gecweden habbað. þæt is se teoþa æcen. eal  
 swa se fulh hit gegaf. þonne kane to þæt Cýniger  
 genefa. 7 þæt byrcopar, 7 þæt land nican, 7 þæt mæ-  
 tnes mæssegeort. 7 niman unþancer þonne teoþan  
 dæl to þam mæsse he hit to gebýrge. 7 teacum  
 him to þam nigofum dæl; 7 to dæle man þa eahta  
 dælar on tpa. 7 so se landhlaford to healfum, 7 to  
 healfum se byrceop; sw hit Cýniger man. sw hit ðe-  
 genen; *this is* <sup>u</sup> *anciently thus turned*; Reddantur  
 “Deo Debitæ rectitudines annis singulis, hoc  
 “est

*Leg. Canonicæ,*  
*cap. 8.*

<sup>u</sup> *In libris Im-*  
*mense fol. 6.*  
*Ms. Bibl. Cotton.*  
*sed optimum ha-*  
*rum legum ex-*  
*emplar extat in*  
*Bibliotheca. Se-*  
*reniss. Principis*  
*Magnæ Brit. ad*  
*D. Jacobi.*



“ est Eleēmosyna carucarum, XV. diebus post  
 “ Pascha, Decimæ de nouellis gregibus in Pen-  
 “ tecosten, terrenorum fructuum in festo om-  
 “ nium Sanctorum. Si quis hanc Decimam da-  
 “ re nolit sicut omnium nostrum commune est  
 “ institutum, hoc est Decimam acram sicut ara-  
 “ trum peragrabit, eat præpositus Regis & E-  
 “ piscopi & Domini ipsius terræ cum Sacerdote  
 “ & ingratīs auferant & Ecclesiæ cui pertinebit  
 “ reddant. Nonam verò partem relinquant ei  
 “ qui Decimam dare nolit. Octauas partes re-  
 “ liquas in duo diuidant, & sit vna medietas E-  
 “ piscopi, alia terræ Domini, siue sit homo Re-  
 “ gis siue Thaini. with this *Latin*, the *Saxon* a-  
 grees. and it is almost but a repetition of King  
*Edgars* Law for Tithes. and those two Para-  
 graphs in King *Edgars*, the one touching a con-  
 ueyance of a third part of the tithes to a Church  
 that had right of Sepulture, the other concer-  
 ning a Church that wanted that right, are also  
 repeated (as many other Laws of the former a-  
 ges) in those of King *Knouts*; which are called  
*Leges Angliæ* generally in the ancientest Latin  
 Copies that I haue seen.

y In Biblioth.  
 Serenissimi Prin-  
 cipis.

XIII. The Copie of the Laws of *Edward*  
 “ the Confessor, that bears this title; *Leges bo-*  
 “ ni Regis Edwardi quas Guilielmus Bastardus  
 “ postea confirmauit, *hath this* <sup>2</sup> *for Tubes*: De  
 “ omni annona, Decima garba Deo debita est &  
 “ ideò reddenda. Et si quis gregem equarum  
 “ habuerit,

1. *Leg. Edward.*  
*Confess. cap. 8. & in*  
*Reg. de Honore.*  
*Annual. pag. 343. b*

“ habuerit, pullum reddat Decimum. Qui v-  
 “ nam vel duas habuerit, de singulis pullis sin-  
 “ gulos denarios. Similiter qui vacas plures  
 “ habuerit, Decimum vitulum. Qui vnam vel  
 “ duas, de vitulis singulis obolos singulos. Et  
 “ qui caseum fecerit, det Deo Decimum. si verò  
 “ non fecerit lac decima die. similiter agnum  
 “ Decimum, vellus Decimum, caseum Deci-  
 “ mum, butyrum Decimum, porcellum Deci-  
 “ mum. De Apibus verò similiter Decima com-  
 “ modi. Quin & de bosco, de prato & aquis &  
 “ molendinis, parcis, viuarijs, piscarijs, virgul-  
 “ tis & hortis, & negotiationibus & omnibus  
 “ rebus quas dederit Dominus. Decima pars ei  
 “ reddenda est, qui nouem partes simul cum  
 “ Decima largitur. Qui eam detinuerit per Iu-  
 “ stitiam Episcopi & Regis (si necesse fuerit) ad  
 “ redditionem\*arguatur. Hæc enim prædicauit \* Forte *adigatur*.  
 “ B. Augustinus, & concessa sunt à Rege Baro-  
 “ nibus & populo. But howeuer those Laws  
 are attributed to the Confessor; it is certain that  
 as the ordinarie Copies of them are, and as they  
 speak in the published Volume of *Saxon* Laws,  
 they are not without many mixtures of some-  
 what later transcribers.

XIV. In a Synod,\* writen in *Saxon*, & held a-  
 bout the Cōquest, diuers Laws preceding, about  
 the punishment of crimes by fasting VI. VII. X.  
 yeers together with bread and water, a perswas-  
 ion follows for Almes &c. in it we read *teofige* on

a *Recenti* Ms. apud  
 V. C. Rob. Cotton.

godey ert eal þ he age. that is, *Let Tibe be paid of all that is possesi though the Lords bountie.*

b In Excerptis  
Ms. apud eun-  
dem,

XV. Out of a *Ms.* of *Excester* I haue seen  
b transcribed a Canon of a Councell held at  
*Windsore*, some yeers after the *Norman* Con-  
quest (I think vnder *Lanfrank*) in these words:  
*Vt Laici Decimas reddant sicut scriptum est.*

c Apud G. Mal-  
roe b lib. 2. de gift.  
Pontific. sol. 129. b,  
a. d. 1102.

XVI. In a Conuocation at *Westminster* held  
in 3. *Hen. 1.* vnder *Anselm* Archbishop of *Can-*  
*terburie*, and *Girard* Archbishop of *Torke*, for  
both Prouinces, it was ordaind *Vt Decimæ non*  
*nisi Ecclesijs dentur*. It was not only a Synod  
of the Clergie; but Royall autoritie with the as-  
sent of the Baronage (at least of the greater No-  
bilitie) was ioind with it. for thus speaks the  
“ Monk of *Malmesburie* relating it. Anno Do-  
“ minicæ Incarnationis 1102. quarto autem  
“ præfulatus Paschalis summi Pontificis, tertio  
“ regni Regis gloriosi Henrici Anglorum, ipso  
“ annuente, communi consensu Episcoporum  
“ & Abbatum & Principum totius regni, adu-  
“ natum est Concilium in Ecclesia beati Petri  
“ in Occidentali parte iuxta Londoniam sita, in  
“ quo præfedit Anselmus &c. and then. Huic  
“ conuentui affuerunt, Anselmo Archiepiscopo  
“ petente à Rege, Primates regni, quatenus  
“ quicquid eiusdem Concilij autoritate decer-  
“ neretur, vtriusq; Ordinis concordî curâ & sol-  
“ licitudine ratum seruaretur. Sic enim necesse  
“ erat; quia multis retrò annis, synodali cultu-  
“ ra

“ ra cessante, vitiorum vepribus succrescenti-  
 “ bus, Christianæ religionis feruor in Anglia  
 “ nimis refrixerat. and agreeing to this reason is  
 a passage in the <sup>d</sup> Synod of London, held vnder  
 Lanfrank Archbishop of Canterbury in 9. Will. I.  
*Et quod* (are the words) *multis retro annis in An-*  
*glico regno vsus Conciliorum obsoluerat, renouata*  
*sunt &c.* that Canon seems to haue been made  
 against arbitrarie consecrations of Tithes then  
 practiced, whereof anon largely.

d Apud Fund.  
 lib. dist. fol. 117. 3.  
 & in Ep. p. Lan-  
 franci Mon. Bib.  
 Cottoniana.

XVII. The Law<sup>e</sup> of Henrie the first haue  
 one title, *De placitis Ecclesiæ pertinentibus ad Re-*  
*gem*, and vnder that, are these words: *Si quis re-*  
*ctam Decimam superteneat, vadat præpositus Re-*  
*gis & Episcopi & terræ Domini cum Presbytero*  
*& ingratiss auferant & Ecclesiæ cui pertinebit*  
*reddant, & nonam partem relinquant ei qui Deci-*  
*mam partem dare noluit.* according to those of  
 King Edgar and King Knout <sup>f</sup> before related.

e In lib. Rab.  
 Seaccaris M.  
 esp. 12.

f g. IX. & XII.

XVIII. Alberique Bishop of Ostia, Legat  
 in England to Pope Innocent the second, in 3. of  
 King Stephen, held a Synod at London; and in  
 that (as I haue seen it <sup>g</sup> transcribed out of a book  
 of Worcester) this Canon is, *De omnibus Primi-*  
*tij rectas Decimas dari Apostolica autoritate præ-*  
*cipimus, quas qui reddere noluerit anathematis in*  
*eum sententia proferatur.* Primitiæ must, it seems,  
 be here vnderstood for euery new yeers encrease.

g In Excerptis  
 M. in Biblioth.  
 Cotton.

XIX. Vnder Henrie the second a Pontifi-  
 ciall Decree was sent to all the Bishops of the

li. Extr. tit. de Dec.  
o. 5. peruenit & in  
App. ad Consul.  
Lat. tit. de Decim.

Prouince of *Canterburie* (about the yeer M. C. LXX.) by Pope *Alexander* the third commanding<sup>b</sup> them that they should admonish all men in their seuerall Dioceses, & si opus fuerit, as the words are, *Sub excommunicationis districtione compellere, vt de prouentibus Molendinorum, Piscariarum, Feno, & Lana, Decimas Ecclesijs, quibus debentur, cum integritate persoluant.* the direction of it was, *Cantuariensi Archiepiscopo & eius suffraganeis.* To this you may adde that other<sup>i</sup> of the same Popes to the Bishop of *Winchester*: *Mandamus, quatenus Paracianos tuos de Apibus, & de omni fructu Decimas persolvere Ecclesiasticâ districtione compellas* Both these were afterward made part of *Gregories* Decretalls, and are of force to this day in the Canon Law of the Church of *Rome*.

i Extr. tit. o. 6.  
Conuoc.

XX. In 21. of the same King *Henrie* the second, *Richard* Archbishop of *Canterburie* held a Prouinciall Synod at *Westminster*, in which were neer all the Bishops and Abbots of his Prouince, as also the two Kings, the father and the sonne. there, diuers Constitutions out of old Councells and Popes Decrees were published to be obserued in his Prouince. among them, one is out of a Synod at *Rosne*, in<sup>k</sup> these words: Omnes Decimæ Terræ siue de frugibus siue de fructibus, Domini sunt & illi sanctificantur. sed quia multi modò inueniuntur Decimas dare nolentes; statuimus, vt iuxta Domini  
“ Papæ

k Apud Rogerum  
de Houeden in An-  
nal. part. 2. fol.  
311. a.

“ Papæ præcepta admoneantur semel, secundò,  
 “ & tertio, vt de grano, de vino, de fructibus  
 “ Arborum, de fœtibus animalium, de lana, de  
 “ agnis, de butyro & caseo, de lino & canabe &  
 “ de reliquis quæ annuatim renouantur, Deci-  
 “ mas integrè persoluant. quòd si commoniti  
 “ non emendauerint, anathemati se nouerint  
 “ subiacere.

XXI. Hubert Archbishop of Canterburie by his power Legatin, receiud from Pope Cal-  
 listin the third, in 6. Rich. 1. held a Prouinciall  
 Councell for the Prouince of Yorke; and there-  
 in <sup>1</sup> one of the Canons thus speaks for Tithes.  
*Cum Decime sint tributa egentium animarum &  
 ex præcepto Domini dari debeant, non est redditus  
 eas diminuere. Statuimus itaq; vt de his quæ reno-  
 uantur per annum, cum omni integritate Decime  
 debitæ & consuetæ conferantur; ita vt inprimis  
 Decime absq; vlla diminutione Ecclesiæ dentur,  
 postmodum de nouem partibus mercedes messorum  
 & aliorum seruientium pro arbitrio soluentis tri-  
 buantur.*

<sup>1</sup> Apud eundem  
 part. 2. fol. 430.

XXII. The same Archbishop Hubert in 2.  
 of R. Iohn, <sup>m</sup> Generale celebravit concilium Lun-  
 doniis apud Westmonasterium contra prohibitionem  
 Galfridi filij Petri Comitis de Essexe tunc tempo-  
 ris summi Iustitiarij Angliæ. for it appears that in  
 those elder times there <sup>a</sup> was great controuersie  
 between the King, in whose right the Chief Iu-  
 stice of England here sent out his prohibition,

<sup>m</sup> Apud eundem  
 part. 2. fol. 457. b.  
 & 460. a.  
<sup>n</sup> Consulas Litt.  
 de 10. Ed. 2. in  
 vol. in quo sur-  
 gentis Dunelm-  
 fis reperitur in Bi-  
 bliothec. VCC. Tho.  
 Allen. Oxon. &  
 41. Hen. 3. in An-  
 nal. Baroni apud  
 in eundem.

e Stat. 25. Hen. 8.  
cap. 19.

and the Archbishop touching this point; whether the Archbishop, either as Archbishop or as Legat, might hold a Prouinciall or Nationall Councell without autoritie from the Crown; but that is now declared cleer<sup>e</sup> and so practised that he may not. In that Councell, notwithstanding the prohibition, he ordaind thus for tithes.

“ Cum Deo & Sacerdotibus Dei Decimas dandas, Abraham factis, & Iacob promissis innuent, & autoritas veteris & noui Testamenti necnon & sanctorum Patrum statuta declarent Decimas de omnibus, quæ per annum renouantur præstandas; id inuiolabiliter decernimus obseruandum, ita quod occasione mercedis seruientum vel messorum decima pars non minuatur, sed potius integre persoluatur.

“ Habeant etiam Presbyteri potestatem ante autumnum ex communicandi omnes fraudatores decimarum suarum, & eosdem secundum formam Ecclesiasticam absoluendi. Huic adiungimus sanctioni, vt de terris nouitè cultis, non aliàs dentur decimæ quam Ecclesijs Parochialibus infra quarum limites terræ illæ de quibus Decimis perueniunt excoluntur. Detentores verò Decimarum, iuxta Rothomagensis Concilij constitutum, si semel secundò & tertio commoniti, excessum suum non emendauerint vsq; ad satisfactionem condignam anathematis vineulo feriantur. saluo in omnibus S.S.R.E. honore & priuilegio. which *Saluo* is to euery of his Canons.



XXIII. Among the Decretall Epistles of Pope *Innocent* the third, one P is directed  
 “*Canuariensi Archiepiscopo, vt Ecclesijs Pa-*  
 “*rochialibus iuste Decimæ persoluantur; and*  
 “*thus speaks.* Peruenit ad audientiam nostram  
 “quod multi in Diocesi tua Decimas suas inte-  
 “gras, vel duas partes ipsarum non illis Ecce-  
 “sijs in quarum Parochijs habitant, vel vbi præ-  
 “dia habent, & à quibus Ecclesiastica percipiunt  
 “Sacramenta, persoluant: sed eas alijs pro sua  
 “distribuunt voluntate. Cum igitur inconueni-  
 “ens esse videatur & à ratione dissimile, vt Ec-  
 “clesiæ quæ spiritualia seminant, metere non de-  
 “beant à suis Parochianis temporalia, & habere;  
 “fraternitati tuæ autoritate præsentium indul-  
 “gemus vt liceat tibi super hoc non obstante  
 “contradictione vel appellatione cuiuslibet, seu  
 “consuetudine hæcenus obseruata, quod Cano-  
 “nicum fuerit ordinare, & facere quod statueris  
 “per Censuram Ecclesiasticam firmiter obser-  
 “uari. Nulli ergo &c. confirmationis &c. Da-  
 “tum Lateran. II. nonas Iulij.

XXIV. In a collection of diuers Constitu-  
 tions for the *English* Church, out of Councells  
 and others, titled only 9 *Constitutiones cuiusdam*  
*Episcopi*, and writen about *Hen.* the thirds time,  
 one of Tithes occurs. *Decimas de omnibus que*  
*renouantur per annum & maximè consuetas, dan-*  
*das decernimus & potissime de molendinis & pis-*  
*carijs & fenis & apibus & de terris arabilibus*  
 &

p. *Innoc. 3. in 2. p. 1. Decret. lib. 1. p. 452. edit. Co- lonicæ.*

q. In vol. in qua *Annal. Barro. apud V.C. The. Allen, Oxon.*

Et ad prata postea vel ad pasuram redactis, ita ut occasione mercedis seruientum vel messorum decima parte non frustrentur quo minus eam plene percipiant. Detentores vero earundem Decimarum si semel, secundo, Et tertio commoniti excessum suum non emendauerint; concedimus quod per capellanos locorum usque ad satisfactionem congruam excommunicationis vinculo feriantur. Cum autem hi qui decimas detinuerint vel subtraxerint ad penitentiam accesserint, non admittantur nisi per se vel per manum sacerdotis ei, cui decimæ debentur, satisficiant competenter.

r. *Constit. Eborac.*  
*Ms.*

XXV. A Constitution for due payment of Tithes <sup>r</sup> was made about 30. Hen. 3. by *Walter Gray* Archbishop of *York*. I haue only a note of it which I took out of the Ms. but the words I could not now transcribe for want of the Copie. the Copie it self I once saw in the Librarie of *Mr. Henrie Sauill* who is now with God.

f. *Vide Lond. in*  
*Præm. Const. sig.*  
*de Dec. c. quoniam*  
*propter in præ-*  
*stationem.*

r. *Ms. apud V.C.*  
*Th. Allen, Oxon.*

XXVI. The chiefest of the *English* Canon Laws, made for Tithes (both prediall and personall) is that commonly attributed to a Councel of *Robert Winchelsey* Archbishop of *Canterburie*, held in 23 Ed. 1. at *London*; some Copies <sup>r</sup> referring it to Archbishop *Boniface* and the time about 30. Hen. 3. or to an old Synod of *Merton*. But in the Synod of *Merton* held 42. Hen. 3. no part of it is extant. That I examined in the <sup>r</sup> *Annalls* of the Abbey of *Burton* where the Canons of that Synod are at large collected. yet  
in

in the *Pupilla* \* *oculi*, written by Iohn de Burgo x Part. 9 cap. 3.

Chancelor of Cambridge in M. CCC. LXXXV.

it is called *Constitutio facta apud Merton per omnes Episcopos Angliæ*. These are the words of it,

as it remains in the body of the Prouincial Con-

stitutions. Quoniam propter diuersas con-

suetudines in petendo Decimas per diuersas

Ecclesias inter rectores Ecclesiarum & Paro-

chianos suos, rixæ, contentiones, scandala &

odia maxima multotiès oriuntur. Volumus &

& statuimus quòd in cunctis Ecclesijs per

Cantuariens. Prouinciam constitutis, vnifor-

mis sit petitio Decimarum & proventuum Ec-

clesiarum. Imprimis volumus quod decimæ

de frugibus, non deductis expensis, integrè &

sine aliqua diminutione soluantur : & de fru-

ctibus arborum : & de seminibus omnibus, &

de herbis ortorum nisi Parrochiani compe-

tentem fecerint redemptionem pro talibus de-

cimis. Volumus & statuimus etiam quod de-

cimæ de scænis vbicunq; crescant, siue in mag-

nis pratis siue in paruis siue in cheminis exi-

gantur, & prout expedit Ecclesiæ persoluan-

tur. De nutrimentis autem animalium scilicet

de agnis; Statuimus quod pro sex agnis & in-

fra, sex oboli dentur pro decima. Si septem

sint agni in numero, septimus agnus detur

pro decima rectori, ita tamen quod rector Ec-

clesiæ qui septimum agnum recipit, tres obo-

los in recompensationem soluat parrochiano

“ à quo decimam illam recepit. Qui octauum  
“ recipit, det denarium. Qui verò nonum, det  
“ obolum parochiano vel expectet rector vsque  
“ ad alium annum donec plenariè Decimum a-  
“ gnum possit recipere si maluerit : & quum ita  
“ expectat semper exigit secundū agnum me-  
“ liorem vel tertium ad minus de agnis secundi  
“ anni : & hoc pro expectatione primi anni. Et  
“ ita intelligendum est de Decima lanæ. Sed si  
“ oues alibi in hyeme & alibi in æstate nutrian-  
“ tur diuidenda est decima. Similiter si quis me-  
“ dio tempore emerit vel vendiderit oues, &  
“ certum sit à qua parrochia illa oues venerint :  
“ earundem diuidenda est decima sicut de re  
“ quæ sequetur duo domicilia. Si autem incer-  
“ tum fuerit, habeat illa Ecclesia totam deci-  
“ mam infra cuius limites tempore tonsionis in-  
“ ueniuntur. De Lacte verò volumus quod de-  
“ cima soluatur dum durat ; videlicet de caseo  
“ tempore suo. Et de lacte in autumnò & hye-  
“ me nisi parochiani velint pro talibus facere  
“ competentem redemptionem, & hoc ad valo-  
“ rem decimæ & commodum Ecclesiæ. De pro-  
“ uentibus autem molendinorum volum⁹ quod  
“ decimæ fideliter & integrè soluantur. De pa-  
“ sturis autem & pascuis tam non communibus  
“ quam communibus statuimus quod decimæ  
“ fideliter persoluantur : & hoc per numerum  
“ animalium & dierum vt expedit Ecclesiæ. De  
“ piscationibus & apibus sicut de omnibus alijs  
“ bonis

“ bonis iuste acquisitis quæ renouantur per an-  
“ num, statuimus quòd decimæ soluantur & ex-  
“ iganantur debito modo. Statuimus etiam quod  
“ decimæ personales soluantur de artificibus &  
“ mercatoribus scilicet de lucro negociationis.  
“ Similiter de carpentarijs, fabris, cementarijs  
“ textoribus, pandox atricibus, & omnibus a-  
“ lijs operarijs stipendarijs, vt videlicet dent  
“ Decimas de stipendijs suis nisi stipendarij ipsi  
“ aliquid certum velint dare ad opus vel ad lu-  
“ men Ecclesiæ si rectori ipsius Ecclesiæ placue-  
“ rit. *then a word or two of Mortuaries; after*  
“ *which,* Sed quoniam inveniuntur multi Deci-  
“ mas sponte dare nolentes; Statuimus quod  
“ parochiani moneantur primo secundo & ter-  
“ tio vt decimas Deo & Ecclesiæ fideliter sol-  
“ uant. Quod si non emendanerint primò ab in-  
“ gressu Ecclesiæ suspendantur, & sic demùm ad  
“ solutionem decimarum per censuram Eccle-  
“ siasticam si necesse fuerit compellantur. Si au-  
“ tem dictæ suspensionis relaxationem vel abso-  
“ lutionem petierint: ad ordinarium loci mit-  
“ tentur absoluedi: & debito modo puniendi.  
“ Rectores autem Ecclesiarum seu Vicarij aut  
“ Capellani annui qui predictas decimas pre-  
“ dicto modo propter formidinem hominum  
“ seu fauorem, timore Dei postposito, vt predi-  
“ ctum est, cum effectum non petierint: pena su-  
“ spensionis innodentur donec dimidiam mar-  
“ cam argenti pro sua inobedientia Archidia-

⁊ In Bibb. auctoris.

conco loco persoluant. And then follow two other Constitutions, vnder *Winchelsey's* name, for some more peculiar order in payment. But that first referd to him, is in a Ms. ⁊ (written of about the time of *Henry* the sixth) of the *English* Episcopall Constitutions, seuerally thus titled, *Constitutio Domini Stephani de Langtone Archiepiscopi edita de modo Decimandi*. *Stephen* of *Langton* was Archbishop vnder King *Iohn*. But it is not extant in the Synod of his time.

⁊ Extat in Constit. Præuincæ, lib. 3.

\* Conqueritur etiam de hac iniuria Io. de Arthor in Constit. Osbeckoni c. man lata Dei. verb. iustitiam suam expellit.

XXVII. In a Councell at *London* vnder *Simon Mephham*, Archbishop of *Canterburie*, held in 3. *Ed. 3.* a 2 Canon is against such as hindered Church-men from taking their Tithes, either by keeping them and their seruants from entering into the Land, or by exacting \* *Gloves*, *Stockings*, or some such bribes, before they would permit them take that right, which God, as it is there inserted, *in signum vniuersalis Domini sibi reddi præcepit, & pro suo cultu Clericis assignauit*. All such offenders are branded with Excommunication: and another Constitution of a Councell of *Pauls*, held in 17. *Ed. 3.* vnder *Iohn Stretford* Archbishop of *Canterburie*, is to the selfe-same purpose.

⁊ Extat in 3. lib.

XXVIII. For Tithe of Copis Wood, or *Silua cædua*, also in that of *Stretford*, was a \* Canon in these words: *Quamquam exsoluentibus benè Decimas Deus frugum omnium abundantiam & possessionum promiserit vbertatem:*

" tatem : tamen dolentes referimus quod non  
 " nulli nostræ Prouinciæ contra testamenti ve-  
 " teris atque noui doctrinam de syluis suis cæ-  
 " duis & lignis arborum cæduarum excisis circa  
 " quæ minus,quàm circa fructus agrorum,labo-  
 " ris impendunt,Decimas Deo & Ecclesijs qui-  
 " bus debentur notoriè,propter hoc quod ipfas  
 " in præteritum non dederunt, soluere contra-  
 " dicunt.quòd estimant idcirco licere quod Le-  
 " gem moris de longa inualuisse consuetudine  
 " arbitrantur,in dubium etiam reuocantes quid  
 " silua cædua sit censenda. Nos igitur aduer-  
 " tentes quod si sua portione Ecclesia sit de-  
 " fraudata diutinè,crimen præterea non minui-  
 " tur sed augetur : ac fames & penuria omni-  
 " umque rerum egestas opprimunt bene Deci-  
 " mas non soluente ; huiusmodi declaramus  
 " prouisione Concilij Siluam Cæduam, illam  
 " fore quæ cuiuscunque existens generis arbo-  
 " rum in hoc habetur vt cedatur , & quæ eti-  
 " am succisa rursus ex stirpibus aut radicibus  
 " renascitur ; ac ex ea Decimam vtpote rea-  
 " lem & prædialem.Parochialibus ac Matrici-  
 " bus Ecclesijs persoluendam; nec non siluarum  
 " possessores huiusmodi ad præstationem Deci-  
 " marum lignorum ipforum excisorum in eis,  
 " sicut feni & bladorum omni censura Ecclesi-  
 " astica fore Canonicè compellendos. By this,  
 " Tithe of all kind of Wood was payable. But in  
 " the Parliament with which that Conuocation

a Res. Parl.  
 37. Eliz. 1. art. 28.



was held, a Petition was exhibited by the Commons, *Que nul home soit tret en plee en Court Christien pur Dismes de bois ou de soubz bois si nonn en lieux ou tielx Dismes soloient estre donez.* And the answer was, *Soit fait de cella auxi come il ad este fait einz cez heures.*

XXIX. And the yeer following, in the next Parliament, a <sup>b</sup> complaint was against that Constitution by the Commons. *Item pria le Commen que come Constitution soit fait per les Prelats a prendre Disme de chescun mannere de Bois quel chose ne fuit vnques vsee, & que niefs & femes poent faire testament que est contre reson. que plese per lui & per son bon conseil ordainer remede, & que son people demoerge en mesme l'estate qu'ils soloient estre en temps de tous ses progenitours, & que Prohibitions soiēt grantes a touz ceux que sont empledes de Dismes de bois sans auoir consultation.* Which was no otherwise answerd, but with, *Le Roy voet que ley & reason ent soient faits.*

XXX. Three yeeres after, in <sup>c</sup> 21. Ed. 3. a Petition was touching the same matter put thus in by the Commons. *Item monstre la Commune come nadgairs Lerceuesque de Cantirbiry & les autres Prelats ordenerent vne Constitution a doner Dismes de subbois venduz tant solement, la ou auant ces heures nulles Dismes furent donez, ore les gentz de Seint Esglise per force de la Constitution pernent & demandent les Dismes auxibien de gros bois come de subbois venduz & nient venduz e-*  
contre

<sup>b</sup> Rot. Parl.  
18. Ed. 3. art. 9.

<sup>c</sup> Rot. Parl.  
21. Ed. 3. art. 48.

contre ce qu'ils ont vsez, puis temps de memoire, a grant damage de la Commone de quoi ils prient reme-  
 die del vn point & del autre. To this is answered. L'erceuesque de Cantirbiry & les autres E-  
 uesques ont responduz, que tiele Disme nest de-  
 mandee per reson de la dit Constitution forsque de  
 subbois. But I well conceiue not why they com-  
 plain of the Constitution, as made only for the  
 Tithe of Wood sold. no such thing appeares in  
 it, that iustifies their supposition.

XXXI. This tithing of Wood, and of such  
 other things as were not of Custome paid, still  
 vexed the Commons. And therefore againe in a  
 Parliament <sup>d</sup> of 25. Ed. 3. they exhibit this Peti-  
 tion. Item pria la Commone, que si la Clergie en  
 droit des Dismes de haut bois & southbois ou d'au-  
 tre chose riens demandent ou attemptent de nouel  
 forsque solement ceo & en les lieux d'ont ils ont  
 este d'aunciens temps seisis come en le droit de leur  
 Esglises, que pleise a nostre Seignieur le Roy ent  
 granter Prohibition sans Consultation a touz ceuz  
 que le voillent demander en tiel cas, & que les  
 dites gens de S. Esglise soient defenduz a deman-  
 der Dismes de grosse bois. Here the Commons  
 would haue had such a libertie of discharge of  
 Tithes not vsually paid, as the Philippine in  
 France, and the like Edicts of some other Nati-  
 ons giue the subiect. But the answer was, Le  
 Roy & son Conseil se voillent de ceste Petition  
 auiser.

d. Rep. Parl. Fogg.  
 Hill. 25. Ed. 3.  
 art. 37.

XXXII. But

XXXII. But vpon new Petition, by the Lords Temporall and Commons in the Parla- ment of 45. *Ed. 3.* it was enacted (as you see in the published Statutes, agreeing with the Record) That Tithe should not be exacted of great Trees, being of XX. yeeres growth, or aboue. and that vpon a Suit commenced in the Spiritu- all Court for such Tithes, a Prohibition should be granted, as it had been in former time also v- sed. but that vse, it seemes, had been somewhat discontinued, through a reuerence giuen to that Synodall Canon of Archbishop *Stretford.* Al- though in 50. *Ed. 3. fol. 10. b.* *Belknap* saies, That it was neuer seen, that Tithes had been deman- ded of great Trees and of Timber. This Sta- tute \* hath had still force in practice to this day.

e *Plowd. Comm.*  
fol. 470. 9. Hen. 6.  
fol. 58. &c.

XXXIII. Yet, notwithstanding this Sta- tute, the Clergie were not so contented; but vn- der pretence that it was not indeed, by sufficient autoritie, made a Statute, but only an Ordinance (the contrarie whereof appears both in the Roll and in the consent of following time) oft times afterward brought the Temporaltie in question vpon their Canons; insomuch, that in the Par- lament of † 47. *Ed. 3.* a Bill was put in by the Commons, reciting that of 45. *Ed. 3.* and then relating, that *les persons de Seint Esglise enten- dants que cel Ordinance ne restraint my leur aui- ciene accrochements, surmettants que ce ne fust my*

† *Rot. Parl.*  
47. *Ed. 3. art. 21.*

my afferme pur Estatut, font occasions in Court  
 Christien a contrarie del Ordenance suisdit a grant  
 damage del people, per qui pleise a nostre Seignior  
 le Roy d'asfermer la dite Ordenance pur Estatut a  
 durer pur temps auener, & que Prohibition especi-  
 all sur mesme Lestatut de ceo soit fait en la Chan-  
 cellerie defendant que eux ne tignent plee en Court  
 Christien des Dismes de bois del age auantdit, that  
 is, of XX. yeeres. The answer hereto was, Soit  
 tiele Prohibition grantee come ad este vse d'aunci-  
 en temps. Thus did the Clergie and Commons  
 so differ touching the execution of the Canons;  
 and insomuch, that afterward also the Com-  
 mons put in a Bill, & *Que nul Estatute ne Orde-  
 nance soit faite ne grante au Petition du Clergie si  
 ne soit per assent de voz Commens. Ne que vous  
 dites Commens ne soient obligez, per nulles consti-  
 tutions qu'ils font pur leur auantage sanz assent de  
 voz dites Commens. Car eux ne veullent estre ob-  
 liguez a nul de voz Estatutz, ne Ordinances faitz  
 sanz leur assent.* But the answer was only thus,  
 Soit ceste mature declarè en speciall. This by the  
 way.

R. Rot. Pari.  
 51. Ed. 3. art. 4.

XXXIV. Here may be <sup>h</sup> remembered that  
 agreement in the Parliament at Salisburie, *Quèd  
 consultationes fieri debent de silua cædua, eo non  
 obstante quod non renouatur per annum.* But to  
 what Parliament to refer that agreement, expref-  
 sed by *Concordatum fuit coram Consilio Regis in  
 Parlamento &c.* I sufficiently know not, vnlesse

<sup>h</sup> Rot. Orig.  
 fol. 4. a.

to that of 7. *Rich. 2.* held at *Salisbury*, the Rolls whereof hath nothing of it.

*i Rot. Parl.  
5 Hen. 4. art. 65.*

XXXV. In 5. *Hen. 4.* a Bill was put in by the <sup>i</sup> Commons, against the exaction of Tithes of Quarries of Stone and Slatt. Thus it speaks. *Item priont les Commens que come plusors lieges nostre Seignior le Roy sont souent foits vexiz & trauaillez per Persons & Vicaires de Seint Esglise per Citations & Censures de Seint Esglise pur Dismes de Peres & Sclattes oueres & trabez hors de Quares de sicomme nul Disme de nul tiel Pierre ne Sclatte vnques ne feust demande ne nulle Disme ent paie, que pleise a granter que si ascun Prohibition soit fait en le cas que nul Consultation soit grant a contrarie.* Hereto the answer was, *Le Roy s'aduifera.* But you may see hereof more in the ancient Opinions of the Iudges, deliuered in the <sup>k</sup> Register and <sup>l</sup> Fitzberbert.

*k Orig. fol. 59. b.  
l Nat. Br. fol. 53.  
e. c.*

XXXVI. In 27. *Hen. 8. chap. 20.* it is enacted by Parliament, That through all the Kings dominions, euery subiect according to the Ecclesiasticall Laws and Ordinance of this Church of England, and after the laudable Vsages and Customes of the Parish or other place where he dwelleth or occupieth, shall yeeld and pay his Tithes &c. And some other speciall courses for reco-uerie of Tithes, are in that Act ordained.

XXXVII. By the Statute of Dissolution of Monasteries of 31. *Hen. 8. chap. 13.* it was enacted, That the King and his Patentees should hold

hold the Possessions of the dissolved Monasteries discharged and acquitted of payment of Tithes, as freely, and in as large and ample manner, as the Houses of Religion held them at their time of the dissolution.

XXXVIII. After the dissolution of Monasteries, to which, diuers Tithes and Parish Churches had been appropriated, and were now settled in the Crowne, and thence conueyed into Lay hands, an Act was made in 32. Hen. 8. cap. 7. commanding euery man, *fully, truly, and effectually, to diuide, set out, yeeld or pay all and singular Tithes and Offerings, according to the lawfull Customes and Vsages of the Parishes and Places where such Tithes or Duties shal grow, arise, come, or be due.* And remedie is giuen for Ecclesiastique persons before the Ordinarie; and for Lay men, that claimed appropriated Tithes by grant from the Crown, in the secular Courts, by such actions as vsually Lay possessions had been subiect to.

XXXIX. By the Acts of 27. Hen 8. cap. 21. 37. Hen. 8. cap. 12. and the Decree made vpon them, the Citizens and Inhabitants of London and the Liberties were commanded to pay their Tithes to the Parsons, Vicars, and Curats of the Citie, according to a rate of the rents of their houses; that is, two shillings nine pence for euerie pound. and that if no rent be reserued, the Tithe should be duly paid, according to what

their houses had been last letten for. and according to that also, are owners bound to pay. But a Prouiso is in the Decree, That where a lesse summe then after two shillings nine pence the pound hath been accustomed to bee paid for Tithes, in such places the former custome should be continued. And some other particulars are in it, which are too long to be here transcribed. you may easly see it whole. But anciently, in *London*, on euery Sunday and other principall Feast day, the chief maintenance of the Ministers was encreased, by a farthing offered out of euery tenne shillings of rent. *Ex Ordinatione antiqua*, sayes *Lindwood* <sup>m</sup>, (and that Ordinance, as I haue heard, was either made by *Roger Niger* Bishop of *London*, in 13. *Hen. 3.* as a new one, or as a confirmation of former vse. as which of these, I purposely abstain here to enquire) *in dicta Ciuitate, tenentur singulis Dominicis diebus & in principalibus Festis & Sanctorum Apostolorum & aliorum quorum Vigiliæ ieiunantur offerre pro singulis X. solidis redditus domus quam inhabitant vnum quadrantem.* And the LII. farthings so yearly paid on Sundaies only, came so neere to the iust Tenth of the rent, that they were thought on as a Tithe paid; the other being reputed rather by the name only of Offerings. Which you may see in the same *Lindwood*; where he disputes the question, whether those farthings excused the Citizens from personall Tithes of their gaines;

and

m. In Consilio.  
Præm. tit. de  
Dec. c. Savilla,  
§. Negotiationum.



and concludes, that they did not. But before these Acts and the Decree, no Tithes, as Tithes, were generally paid in that Citie. in some places<sup>n</sup> they were, as in the libertie of *S. Martins le Grand*, which is rather in *London* then of it. neither can I but here remember that custom of the Eastern Church thus maintaind chiefly with Offerings, or *εσπορίαι*, as they called them, which specially appears in the answere of *Theodore* • *Balsamon* Patriarch of *Antiochia*, to *Mark* Patriarch of *Alexandria*, touching the quantitie of what was to be offered. He tells him, that no certain quantitie is appointed by the Canons, and that through inequality of mens estates (none of them giuing any such part to the Church as that it could discover their abilities) which permits not a regular certaintie, they were contented with what custom and free bountie of the giuers bestowed. *ἐπεὶ δὲ* (saies he) *ἡ τῶν περιουσιῶν ἀνισομερία, καὶ ἡ ἐνδεῖα τῶν τέτων ἐπέχει τὴν ὑποτίπασιν* (πολλοὶ γὰρ τῶν αὐτῶν ἡ δίδωσι πρὸς ἐπίσκοπον) ἀρκούμεθα τῇ συνήθειᾳ καὶ περιουσίᾳ τῶν δίδόντων. which is in substance the same before in *English*.

XL. In 2. and 3. *Ed. 6. chap. 15.* it was enacted that all prediall Tithes should be thenceforth paid as of right they had been within forty yeers next preceding, or according to custom ought to haue been, with allowance of Priuileges lawfull Prescriptions or Cōpositions reall. and personall Tithes of gain by merchandise and

n Vide 16. Ed. 3.  
quare impedit.  
147. 38. Ed. 3. fol.  
13. a. Grants case  
in Report. 11 fol.  
16. a.

o In Responsis.  
inter monumenta  
Iuris Græco-Ro-  
mani edit. à Lou-  
clauso S. Freleto.

artifice in such places, and as within XL. yeers pecceding they had been accustomedly vsed to be paid, are commanded to be paid yearly at or before Easter. Other particulars and the remedies giuen by the Act may be easier found in it, then I can transcribe them.

XLI. To these may not amisse be added those Laws for Tithes, proposed by the VIII. persons chosen to begin a new body of Canon Law for *England* in 5. *Ed. 6.* according to the first purpose of the Statut of 25. *Hen. 8. cap. 19.* (which was seconded also by the Statut of 3. and 4. *Ed. 6. cap. 11.*) whereby XXXII. persons assigned by the King should haue made it. neither were those VII. to haue giuen sufficient autoritie to it according to those Statuts, without approbation of XXXII. afterward that should haue censured their reformation. The VIII. were *Thomas Cranmer* Archbishop of *Canterburie*, *Thomas* Bishop of *Elie*, *Richard Cox* the Kings Almosner and *Peter Martyr* Doctors of Diuinitie, *William May* and *Rouland Tailor* Doctors of Law, and *Iohn Lucas* and *Richard Gooderik* Esquires. In what they proposed, is found a constitution in the Kings name that all predial tithes should be paid in kind to the Ministerie *integre & explete* (with an exception of timber Trees of XX. yeers growth) as also of the profits of Milles, of Turbaries, Cole-mines, Quarries of stone and all other of like kind. Of all Agistments also

also Tithes are there paiaable, and of the encrease of all kind of beasts, wild and tame; of fish, of butter, cheefe, milk, wooll, wax. and the Statute of 2. and 3. *Ed. 6.* for Tithes is there receiued for so much of it as is not against a generall payment which they would haue had ordaind. But these as the rest in the Volume with them, were only intended for Laws, but neuer had sufficient autoritie or confirmation. The intent was first that those Canon Laws only, which according to the purpose of the two Statuts of *Hen. 8.* and *Ed. 6.* should be compiled, might haue autoritie in the Vniuersities, and force in practice; but so, that there might still be *praeseruatio legum nostrarum communium in suo vigore remanentium*, as the words are in the Patent of *Ed. 6.* that authorizes the *VIII.* persons to consult about them.

For our Laws of Tithing either made or desired, thus much. But before we speak of the *Practice*, it is requisit that we enter into some disquisition touching Parishes or Parochiall right according whereto at this day from ancient time the payment of Tithes is regularly performed.

## CAP. IX.

- I. Of Parishes in the *Primitive Church* of the Britons.
- II. Parishes in the *Primitive Church* of the English Saxons. first limited only in regard of the Mi-

Ministers function, *not of Parochiall profits. all the profits of euery whole Dioceſe, firſt made a common treaſure to be diſpoſed of by the Biſhop and his Clergie, of the ſame Dioceſe. Reſiſtence of the Biſhop and Clergie in thoſe times. The great regard then had to euery Clergie man.*

III. Of diuiſion of our Pariſhes. *whether Honorius Archbiſhop of Canterburie firſt deuided them. Parochia or Parcecia diuerſly taken.*

IV. Lay-foundations of Pariſh Churches; *from whence chiefly came Parochial limits in regard of the profits receiud to the ſingular uſe of the Incumbents. Limitation of Tithes by K. Edgar to the Mother Pariſh Church, or Monafterie. Monafteries preferd before other Churches for buriall. Mortuaries. Minſtre. a third part of Tithes (according to K. Edgars Law) muſt be giuen to a new-built Church that had right of Sepulture by the Founder. Sepultura and Baptiſterium. Capella Parochialis. a Pariſh commanded to be made (out of another that was too large) by the Pope. one Pariſh ioind to another by the King.*

**I**N conſideration of our *Pariſh Churches and Parochiall limits*, the times of the Britons firſt, then of the *Engliſh-Saxons* and forward are to be thought of. that is, the elder times of their *Chriſtianitie.*

I. For the *Britons*; little or no Testimonie of credit is extant that discouers the Ecclesiasticall policie vsed by them, in their primitiue times, or declares the possessions of their Hierarchie. And we omit here wholly what might be collected out of that fabulous tale of *Augustine* preaching at *Cometon* in *Oxfordshire*, whereof more in the next Chapter. Although *K. Lucius* had instituted XXVIIII. Bishops, and III. Archbishops (as the *British* storie tells vs) yet, how in those Diocesess any distinct Parishes were, appears not expressly. But we may very well think that such kind of Parishes only were in those Bishopricks as we haue already \* shewd to haue been in the Primitiue Church elsewhere. neither is it likely that in those times, the custom of this Island therein should differ from what was euen vni-  
 \* Chap. 6. §. 3.  
 formly receiued through those parts of Christendom, wherof we haue best testimonie remaining. But if all ancient autoritie were of credit, Parish Churches expressly mentiond of about the time of CCCCXC. and endowd as at this day might be found among the *Britons*. For when *Dubritius* was made Archbishop of *Southwales* which they called *Dextralis Britannia*, and his See appointed at *Landaff* vnder *Mouris* Prince of that *Wales*, diuers Churches with their endowments of Tithes, Oblations, and other profits were appropriated to him and his successors; “ by the relation of an old Autor. Propter san-

a Anonym. Ms. de  
primo statu Lau-  
dauens. Ecclesia in  
Bibl. Cottoniana  
eadem in *Codice*  
*Laudau.* qui *Tilo*  
dicitur habentur.  
Recens autem  
exscriptus *Tilo*  
reperitur in ea-  
dem Biblioth.

“ Citatem suam (*are bis<sup>a</sup> words*) & prædicationem præclaram Beati Pastoris & regalem parentelam suam plures Ecclesiæ cum suis dotibus, Decimis, oblationibus, sepulturis, Territorijs & liberâ communionem eorum datæ sunt sibi & successoribus suis omnibus à Regibus & Principibus totius regni Dextralis Britanniæ. *and then*, Videns autem sanctus Dubritius Largiſſuam potentum manum erga ſibi comiſſam Eccleſiam, partitiſ eſt diſcipulos mittens quosdam diſcipulorum ſuorum per Eccleſias ſibi datas, & quaſdam fundauit Eccleſias, & Epiſcopos per dextralem Britanniæ coadiutores ſibi, ordinatis Parochijs ſuis, conſecrauit. But this Autor wrote not before about the beginning of the laſt C C C C. yeers from Chriſt, and ſpake of theſe things in the phraſe of his own time. the hand and context and their relations in him iuſtifie it. he talks, you ſee, of Churches endowd and appropriated and founded, as if he meant no other then ſuch as now are conueiable by Patrons and Ordinaries in the courſe of appropriations uſed in later ages, and filled with Incumbents that had in them like eſtates and particular intereſt in the profits as Parſons at this day. indeed, that in thoſe times Churches were built here, no doubt can be made; neither is it to be conceiud how<sup>b</sup> Chriſtianitie could be in any Nation much ancients (if generally receiud, or by any number) then Churches

b 1. Ad Cor.  
cap. 11. 22.  
Sed videſis *Tiſſo-*  
*dor. Peluſi.* lib. 2.  
*Epiſt.* 246.

Churches or some conuenient Houses or other places in the nature of Churches, appointed for the exercise of deuotion. and expresse mention  
 \* is of a Church built here in the time of the *Romans*, to the honor of *S. Martin* in which *Augustin* and his followers when they came first from *Rome*, made their holy assemblies, and others also they repaired. and saies *Gildas*, of the Clergie of his time, that is about *D. LXXX. Ecclesia domo habentes, sed turpis lucri gratia eas adeuntes.* But I ghesse, that vnder *Dubriti* few or no parish Churches were otherwise created then for conuenient places for such Ministers as the Bishop out of his Clergie arbitrarily sent thither, and that the offerings & other profits there receiued were to the common treasure of the Diocese, and to be dispensed as is before declared, where we speak generally of those elder times. & in regard no more certainty of the establishing of the endowments, or places of residence in the *British* Hierarchie, may be found, I willingly permit to euery man his own coniecture.

c. Beda Hist. Eccles. lib. 1. cap. 26.

I I. For the age of the *Saxons*; we read that *Augustin* and his companie, when they first came to *K. Ethelbert* in *Kent*, began there to imitate  
<sup>d</sup> *Apostolicam primitiue Ecclesie vitam, ea tantum quæ victui necessaria videbantur ab eis quas docebant accipiendo*, and, that after they had conuer-  
 ted the King, they builded and repaired Churches. *maiores prædicandi per omnia, & Ecclesias fabri-*

d. Beda lib. 1. cap. 26.



*fabricandi vel restaurandi licentiam accipiebant.*

*e Cart. Antig. I.  
8. in arce London.*

So *Ethelbert* in his Charter of foundation ( if you will beleue the autoritie <sup>e</sup> whence we haue it) of his Abbey in *Canterburie*, talks of *alias quas fabricauit Ecclesias*. And doubtlesse those Churches which they built, or repaired, as also the Temples of the Gentiles which by aduise of Pope *Gregorie* to *Mellius* were not to be destroyed, but conuerted to Christian seruice, had some kind of limits of adioining Villages or Towns, and so were in that respect Parochiall. But those limits and Churches were variously chosen and assigned to ministring Priests, according to the conuenience of the assembling of the Neighbour-inhabitants; but not so ordaind that euery Parishioner was bound to keep his deuotion within the limits of this or that parish church. that is, Parishes were then limited only in regard of the ministring Presbyterie (whence they were called *perparcypnean* *i.* circuits, within which the Priests exercised their shruing) but not in regard of the profits receiud from the Parishioners. For the whole Diocese (first of *Canterbury*, thē of the other elder Bishopriques, as they were instituted) was indeed the only limited Parish, in regard of the Parishioners profits. & the Clergie of the Bishop, that is, his familie of Churchmen, were the Curats in inferior Churches, according as the Bishop appointed and altered them; and whatsoeuer they receiued through deuotion

deuotion of good Christians, made vp a common treasure for the whole Diocese (whence it followd, that it was not materiall at what church any Parishioner offerd his Christian bountie, so he did it within the Diocese) which was both consonant to what is found to be the vse of other Churches in the Primitiue times, and is also confirmed by that *Augustin* in his question to Pope *Gregorie*, touching Bishops. he demanded *qualiter cum suis Clericis conuersentur? vel de his que fidelium oblationibus accedunt Altari, quantae debeant fieri portiones?* whereto the Pope answers that the custome is generally to make a quadripartit diuision for the Bishop, for his Clergie, for the Poor, and for reparation of Churches. but he admonishes him, that in the tendernesse of the *English-Saxon* Church, he and his Clergie should still imitate the communitie of all things vsed in the Primitiue times vnder the Apostles. The *Saxon* of that question <sup>f</sup> is obseruable. *Æfter be Bysceopum; hu hie mid hrona gefenum dnohtian 7. lufian scylen. Oddē in þam lacum geleafsumpa þe hie to peofodum, 7 to godes cýn-cum þneagað, hu monige dalar þara beon scýle,* that is, *first concerning Bishops. how they should bear themselves among their Clergie, or how many parts they should haue in the offerings that good Christians brought to Altars and to Gods Churches.* here it is more plainly exprest, that whatever came to any Altar or Church, within the

<sup>f</sup> Exat in *Beda*  
exemplaris Saxo-  
nici *Ms. lib. 3. in*  
*Bibl. Cononiana.*

g. Videlicet Bedam  
lib. 4. Eccles. lib. 4.  
cap. 17.

Diocese, was one common profit to be deuided or emploied, as Pope *Gregorie* answers; where he tells him also that the Bishop and his Clergie g must liue together, *Sed*, saith he, *quia fraternitas tua Monasterij regulis erudita, seorsum viuere non debet à Clericis suis in Ecclesia Anglorum &c.* So that you may colle& that in these Primitive times of the *Englisb-Saxon* Church the Bishop and the whole Clergie of the Diocese were as one body liuing vpon their endowments (bestowd on the Bishoprique) and their treasure that came from the sundrie places of deuotion whither som one or other of them at the Bishops appointment, was sent to preach the Word and minister the Sacraments. euery Clerk hauing his diuidend for his maintenance. Neither in these elder times, I think, did any of these of his Clergie or Chaplains vsually reside elsewhere then with him at his Bishoprique (as Deanes and Chapters at this day) or in some Monasteries whence they might as occasion required, at certain times go into those Parishes which were distinguished only for seuerall functions of those Chaplains, lest want of such distinction might the sooner haue caused also a want of speciall discharge of this or that Cure. so that there were *singularum Ecclesiarum Presbyteri* <sup>h</sup> *qui populum erudire debent*, and they were particularly ordained for the Title of this or that Church; and euery one was bound by our canons of that time

not

h Synod. Anglic.  
c. 1 & 6. ann. 786.  
Censur. 8. cap. 9.

not to leaue the Church for which he was so ordained. And from their residence with the Bishop, or out of the Parish in Monasteries, came it, as it seemes, that they were but rarely seen abroad among the people. for so rarely were they seen abroad, that when euer any of them were espied in the Countrey, the people vsed presently to flock about him, and with all reuerence humbly to beseech his Benifons, either by signing them with the Crosse, or in holy prayers for them; and, with all earnestnesse of attention, they heard what he preached. This is that\* which *Bede* teaches, when he tells vs, that *si quis Sacerdotum in vicum forte deueniret, mox congregati in vnum vicani, verbum vite ab illo expetere curabant.* And againe, *Erat quippe moris eo tempore populis Anglorum, vt, veniente in villam Clerico vel Presbytero, cuncti ad eius imperium verbum audiri confluerent, libenter ea quæ dicerentur audirent, libentius ea, quæ audire & intelligere poterant, operando sequerentur.* How long this communitie in euery Diocese between the Bishop and his attending Clergie (which is denoted often by the name of *Episcopi Clerus*) continued, fully appears not. But, that it was not out of vse till past more then C. yeers after *Augustines* comming; that is, till past D. C C. yeers from Christ, may be coniectured out of those testimonies of *Bede*, which extend as farre.

III. Yet it is commonly receiud, that *Honorius*,

\* Vide cum *hyst.*  
*Ecclesiæ*, lib. 3. c. 26.  
& lib. 4. c. 27.

*norius*, the first Archbishop of *Canterburie* after *Augustine*, about the yeer D.C. XXX. first diuided his Prouince into Parishes. And in the late historie of the Archbishops of *Canterburie*, written by Mr *Ioscelin*, it is thus deliuered of him. *Neque solum Episcopos tanquam superiores turrium custodes Ecclesie superimposuit, sed etiam, Prouinciam suam primus in Parochias diuidens, inferiores Ministros ordinauit.* And according to this, haue some of our greatest and most learned Writers related. But I doubt much how it can at all stand with truth. For if *Parochie* be here meant only for such as were assigned Limits for those which were sent arbitrarily from the Bishop, out of the number of his Chaplains, or his *Clerus*, residing for the most part, in those elder times, with him at his Bishoprique; then cleerely, *Honorius* was not the first that made diuision of them. Such kind of *Parochie* are euen neere as ancient as Bishopriques; and questionlesse, in *Augustines* time. how could otherwise, Gods Seruice be orderly had in the Infancie of the Church? And when euer seuerall Churches for Christian Seruice, or other places for holy Assemblies, began, then began such *Parochie*. And that Churches were built here before *Honorius* his time, is before manifested. If, on the other side, *Parochie* be taken for what it's vsually vnderstood, that is, for such Limits as now make Parishes, bounded as well in regard of the profits

receiud from the Parishioners (due only to the Minister of that Church) as of the Incumbents function and residence; how will that stand with the communitie of Ecclesiastique profits, and the Bishops and his Clergies living together, that may be without much difficultie discovered out of *Bede*, to haue continued after *Honorius* also? But where euer that testimonie of his diuiding Parishes was first found, I doubt it was mis-vnderstood, through the various signification of *Parochia*. For in those ancient times, *Parochia* vsually denoted as well a Bishoprique, or Diocese, or Byrceope *rycne*, as the *Saxons* called it, as a lesse Parish. That signification is very obuius in the old Councells of both Tongues (as it is also specially obserued by the learned *Filesfacus* in his *Paræcia*) and in the Moniments of this Kingdome. For it is related of King *Cenwalch*, that he diuided <sup>i</sup> *Prouinciam in duas Parochias*, when he made a new Bishoprique at *Winchester*, that was taken out of the Diocese of *Dorchester*. And in the Councell of *Hertford*, held vnder *Theodore* Archbishop of *Canterburie*, one Canon is <sup>k</sup>, *Vt nullus Episcoporum Parochiam alterius inuadat sed contentus sit gubernatione credita sibi plebis*. So in *Florence* of *Worcester*, vnder the yeere D. C. LXXX. *Merciorum Prouincia in quinque Parochias est diuisa*, that is, into fve Bishopriques. And the truth is, that it may be said properly enough, that *Honorius* was the

i *Beda lliij. Eccl. lliij. cap. 7.*

k *Idem lib. 4. c. 5.*  
*& videtur c. 16.*  
*q. 2. c. 6. sanct.*

first vnder whom his Prouince was diuided into such *Parochiæ*, or Bishopricks. that is, No other Bishopricks (except *Canterburie*, *London*, and *Rochester*.) were in his Prouince vntill his time; those three being almost of one antiquitie. But vnder him, *Byrinus* was made first Bishop of the *West-Saxons*, and had his See or Byscoprethe (as they calld it) at *Dorchester*, and *Fælix* the *Burgunone* was likewise ordaind first Bishop of the *East-Angles* at *Dunwich*. Which two Ordinations, in regard the like had not been in this Prouince of *Canterburie* from *Augustines* time till this *Honorius*, were perhaps the cause why it might be related, that *Honorius primus Prouinciam suam in Parochias diuisit*. Which, although it were to be conceiud of such Parishes as at this day wee call by that name, yet could not extend to all his Prouince. For not till long after his time, was Christianitie receiud in the Kingdome of *Sussex*, which was first conuerted by *Wilfrid*, first Bishop of *Selsey*, in the yeeer D. C. LXXIX. Hitherto then, for aught can out of ancient Moniments be proued, no Limits Parochiall, in regard of the profits to be receiud from the Parishioners, and spent by this or that Minister only, were assigned. But the ancient course of a kind of communitie of all profits of the Diocese, with the Bishop and his Clergie, remaind still in vse. Neither was the interest of many Churches, it seems, as yet here in any Lay-founders.



founders. But the Bishops, as I thinke, had both the interest and gouernance of the Churches built by the King, and tooke care for building new in their owne endowments, and hallowing old ones, that had been either prophaned since Christian Service vsed in them among the *Britons*, or formerly consecrated only to Heathenisme. So may you vnderstand that of *Byrinus*, first Bishop of *Dorchester*. *Factis dedicatisque Ecclesijs multisque ad Dominum, pro eius labore, populi aduocatis, migravit ad Dominum*, as *Bede* words are ; in the *Saxon* of which it is exprest, that he Cipicean pophte 7 gehalgode, that is, *made Churches, and hallowed them*.

IV. But afterward, when deuotion grew firmer, and most Lay men, of faire estate, desired the Countrey-residence of some Chaplains, that might be alwaies readie for Christian instruction among them, their Families, and adioyning Tenants ; Oratories and Churches began to be built by them also : and being hallowed by the Bishops, were endowed with peculiar maintenance from the Founders, for the Incumbents that should there only reside. Which maintenance, with all other Ecclesiastique profits that came to the hands of euery such seuerall Incumbent ( in regard, that now the Lay-founder had, according to the Territorie of his Demesnes, Tenancies, or neighbouring Possessions, made and assigned both the Limits within which

the holy Function was to be exercised, and appointed the persons that should repaire to the Church, and offer there, as also provided a speciall Salarie for the performance) was afterward also restrained from that common Treasurie of the Diocese, and made the only reuenuē, which became perpetually annex to the Church of that Clerk who receiued it. Neither was it wonder, that the Bishops should giue way to such restraint. for had they denied that to Lay founders, they had giuen no small cause also of restraining their deuotion. Euery man, questionlesse, would haue been the vnwillinger to haue specially endowd the Church, founded for the holy vse chiefly of him, his Familie, and Tenants, if withall he might not haue had the libertie to haue giuen his Incumbent, there resident, a speciall and seuerall maintenance; which could not haue been, had the former communitie of the Clergies reuenuē still remained. Out of these Lay foundations chiefly, doubtlesse came those kind of Parishes, which at this day are in euery Diocese. their differences in quantitie being originally out of the difference of the seuerall Circuits of the Demesnes or Territories possessed by the Founders. And after such time as vpon Lay foundations, Churches had their profits so limited to their Incumbents, no doubt can be, but that the Bishops, in their Prebends, or Ad-uowsons of Parishes, both in Cities and in the Coun-

Countrie, formerly limited only in regard of the Ministers Function, restrained also the profits of euery of their seuerall Churches, to the Incumbents; that so a vniformitie might be receiued in that innouation of Parochiall right. At what time these Lay foundations began to be frequent, plainly enough appears not. But some mention is of them about the yeere D. C C. as you may see in <sup>m</sup> Bede, where he speaks of one *Puch*, a Saxon Noble man, that had built a Church, and entreated *Iohn*, Bishop of *Hangulstad*, to consecrate it; and the like also of one *Addi*. *Alio item tempore*, sayes hee, *vocatus ad dedicandam Ecclesiam Comitibus vocabulo Addi*. Some such more, of about that time, may bee found. But about the yeere D. C C C. many Churches, founded by Lay men, are recorded to haue been appropriated to the Abbey of *Crowland*, as you see in the Charters of Confirmation made by *Bertulph* King of *Mercland*, and of others, to the same Abbey, reported by *Ingulphus*. Whence it may bee obserued, that by this time Lay foundations were grown verie common, and Parochiall Limits also of the Parishioners deuotions. And in a Councell held in D. C C C. XVI. vnder *Wilfrid*, Archbishop of *Canterburie*, wee find, *Vbi Ecclesie adificentur, à propriæ Diocesis Episcopo sanctificentur*. And a Canon of the <sup>n</sup> same Synod ordains, That vpon the death of euery Bishop, *Statim per sin-*

<sup>m</sup> Hist. Eccl. lib. 5.  
cap. 4. & 5.

<sup>n</sup> Martini Baluzii  
Cottoniana, &c.

*gulas Parochias in singulis quibusque Ecclesijs, pulsato signo, omnis famulorum Dei catus ad Basilicam conueniat. Ibique pariter XXX. Psalmos pro defuncti anima decantent, & postea vnusquisque antistes & Abbas DC. Psalterios & CXX. Missas celebrare faciat, & tres homines liberet, & eorum cuilibet tres solidos distribuat &c.* with other Ceremonies of Fasting and Prayer (according to the time) for the soule of the Bishop. Here, it may seem, Parishes limited as at this day, are vnderstood. But the first expresse mention of limitation of profits (other then of the endowing) to bee giuen to this or that Church, is in those Laws of King *Edgar*, made about D. CCCC. LXX. where a three-fold diuision is of Churches. the first, is called *Ealdan Mynstre*, that is, *Senior Ecclesia*, which \* name anciently was giuen to Cathedrall Churches; the second, a Church that hath *Legeþrope*, or place for Buriall; the third, a Church that hath no *Legeþrope*. Where it is ordaind, that euery man, hauing not erected a Church of his own, should pay his Tithes to the *Ealdan Mynstre* *ðe reo hýnneþre to hýnþ*; that is, *to the ancientest Church or Monasterie where he bears Gods seruice*. Which I vnderstand not otherwise, then of any Church or Monasterie, whither vsually in respect of his Commorancie or his Parish (determined according to the *Farmes*, *Houses* and *Lands*, occupied with those *Houses* or *Farmes*) he repaired,

\* *Leg. Francie,*  
*apud Filescum,*  
*lib. de Parocia.*

paired; that is, his Parish Church or Monasterie. For we must remember, that in those times, Monasteries (which somewhat before *Edgar* were for the most part filled with secular Clerks, who also, as other Clergie men took pains abroad in the spirituall Haruest; and vnder him by Archbishop *Dunstan* procurement were restored onely to Cloister Monks or *Benedictines*) aswell as other Churches erected either by Bishops or Lay men, were in many places the only Oratories & Auditories that the neer Inhabitants did their deuotions in, and perhaps were in regard of buriall most commonly preferd before other Churches whatsoeuer. which may be collected from a Canon of an old Synod of *Ireland* held about these elder times of the *English* Church. neither is it likely but that the manners of these Northern Churches in that age were enough agreeable to each other. In that Synod it appears that any man might haue bequeathed his buriall to what Abbey best pleased him, and that the Abbot to whose Monasterie the bequest was made, should haue the Apparell of the dead, his Horse and his Cow for a Mortuarie, although he had before solemnly giuen all that he had to any other Abbot. whence may easily be coniectured that Monasteries were in chiefeest reputation for a buriall, and had a right of it before any other kind of Parochiall Church, if the dead made choise of any of them. and by the way for that

o *Regular, Concorsia Anglica Nationis Slovach. Sacramentaliumque* Ms. in Bibl. Cotton. & Mal. meibur. lib. 1. de gest. Pontific. fol. 115.

p *In Statut. Synod. M. in ap. dist. Biblioth. cap. 9.*

q *Videsis c. 16. quest. 1. c. 13. Agapinus. & 13 q. 2. c. 6. vbi canonic. sed & vide ppend. ad Consil. Liber. part. 33. cap. 4.*

« Vide Caruti  
l. 2. cap. 13.

that course of paiment of a motuarie (which the Saxons, I think, calld *raþlyceat*) the same Synod affirmes, that *Omne corpus sepultum habet in iure suo Vaccam & Equum & Vestimentum & Ornamentum sui Lecti; nec quicquam horum reddetur in alia debita, quia corpori eius tanquam vernacula debentur.* and although the certain age of that Synod appears not, yet it was after such time as Parishes were limited in regard of the Parishioners repairing to one certain Church and giuing their deuotions there only. for in it also are these words: *quicumque discesserit de sua Ecclesia & in alia Ecclesia sepultus fuerit &c.* what can *sua Ecclesia* be but such a kind of Parish Church, as at this day is titled so? that is, one limited in regard of the Parishioners and their profits receiued from them. But, in that of *Edgars* calden *Minstre*, it is plain that although *Minstre* specially denote a Monasterie, yet all other Parish Mother Churches are vnderstood by it. and indeed *cýruc* and *Minstre* are frequent, as Synonomies in the *Saxon* monuments. But as the first part of his Law that giues all Tithes to the Mother Church of euery Parish, meant in them a Parochiall right to Incumbents, so also the second part, that permits a third portion of the Founders Tithes to be setled in a Church new built, wherto the right of Sepulture is annexed, makes a dispensation for a Parishioner that would build such a Church in his *Bocland* or land possessed

possessed *optimo iure*, or as inheritance deriued from a Charter of feoffment. And howeuer that second part also of this Law, is iterated by King *Knout*, yet I doubt not but that such new erections within old Parishes bred also new diuisions which afterward became whole Parishes, and by conuience of the time, took (for so much as was in the Territorie of that Bocland) the former Parochiall right that the elder and Mother church was possessed of. For, that right of Sepulture or hauing a *legem* top, was, and regularly is a Character of a Parish Church or *Ecclesia*, as it is commonly distinguished from *Capella*. and anciently if a *quare impedit* had been brought for a Church, whereas the defendant pretended it to be a Chappell only, the issue was not so much whether it were Church or Chappell, as whether it had *Baptisterium* or *Sepulturam*, or no. so it appears in a case of *23. Hen. 3.* where *William* of *Whitanslon* in his count against the Archbishop of *Canterburie*, expresses, *Ecclesiam de Hey* in *Suffex* to be of his aduowson, and the Archbishop pleads that what he calls a Church, *non est Ecclesia, imo Capella pertinens ad matricem Ecclesiam de Terringes, ita quod non est ibi Baptisterium neque Sepultura imo omnes qui nascuntur ibidem baptizantur apud Terringes, & similiter omnes qui ibi moriuntur, sepeliuntur apud Terringes &c.* and thence was it also that the whole Clergie of *England* put the inquirie of such an

*1 Trin. Placit.  
23. Hen. 3. rot. 15,  
in arce Londi-  
nensi.*



f In Anst. M.  
Mo. afterii Bur-  
1200fi, sub anno  
1237, apud V.C.  
Th. Allen, Oxon.

2 Lindwood in tit.  
de Censibus c. quā-  
tus Lex natura  
verb. una Ecclesia  
& in tit. de celib.  
Missar c. offensa.  
& vide Bract., fol.  
247 b. & Fleet. lib.  
5 cap. 14. & Bre-  
ton. fol. 226 b  
u Ingulpus fol.  
489. b.

x Extr. tit. de Ec-  
clesiasticis an. c. 3.  
ad audientiam.

issue among their grievances, when in 21. Hen. 3. they desired *Otho* the Popes Legat, among other freedoms, to get for them of the King, *Quod indices seculares non decident causas Ecclesiasticas in foro seculari, nec tales homines determinant vtrum talis Capella debeat habere Baptisterium & Sepulturam an non.* For, if it had the right of administration of Sacraments in it and Sepulture also, then differed it not from a Parish Church, but might be stiled *Capella Parochialis*, by which name some Chappels are with vs known. and in the Saxon times also we find *Cæmiterium* u *Capellæ*, for the buriall place of a Chappell, which must be vnderstood of a Church that had the like right as that which is mentioend in the second part of *Edgars Law*. and those other churches which in his and *K. Knouts* Laws are spoken of, that is, Churches without buriall places, *feldcýpican*, or *field-Churches*, are only what at this day we call Chappels of ease, built and consecrated for Oratories, but not diminishing any thing of the Mother Churches profits. But also besides those originall Lay foundations, some Parishes haue had other beginnings since from alterations made in regard of the inconuenience of their former limits. And this by direction or autoritie both from the Pope, or Bishops, according as they saw occasion exacted; and from the King. For the Pope; we may see in the exãple remaining in the Decretals<sup>2</sup>, where Pope *Alexander*

under the third sends his Decree to the Archbishop of *York*, reciting that in a complaint made to him, he had heard that a certain Town in his Prouince was so distant from the Parish church, that it was very difficult for the Inhabitants to repaire thither, especially in winter, and withall that the Church revenue of the Parish (although that Town were exempted) was not insufficient for the Minister of the Mother Church, wherefore he commands the Archbishop to build in that Town a Church, and with assent of the Founder of the Mother Church, to institut at the Presentation of the Rector an Incumbent there, that might haue to his own vse all Ecclesiastique profits encreasing in the limits of the same Town, and also acknowledge a superioritie to the Mother Church, and that he should do it also whether the Rector of the Mother Church would assent or not. For the King; an old y example is in 13. *Hen. 3.* where because the Church of *S. Peeters* in *Chichester* was very poor, & that only two Parishioners were in it, the King at request of *Ralf Neuill* then Bishop there & Chancellor of *England*, grants, *quod eadem Ecclesia demoliat* & *prædicti duo Parochiani qui spectabant ad ipsam assignentur imperpetuum Hospitali S. Mariae, quod eidem Ecclesiæ est vicinum, ut ibi deinceps percipiant spiritualia & sint Parochiani eiusdem Hospitalis.* And such like commands, occasions, and conueniences, doubtlesse haue al-

y *Pat. 13. Hen. 3.*  
part. 1. membr. 7.

terd and made the limits of diuers Parishes eueriewhere, both in the Countrie and Citie's, which haue to this day many of small Territorie, but of large number of Communicants. For Parochi-all limits, thus much.

## CAP. X.

- I. *The Practice of Tithing. Of K. Cedwalla's Tubing, being no Christian. the custom of the German-Saxons, in sacrificing their tenth captiue to Neptune. Decima ysed for a lesse part also in ancient monuments.*
- II. *The Practice of Tithing in the Christian times of our Ancestors. the tale of Augustin and the Lord of Cometon touching non payment of them. the Tithe of euery dying Bishops substance to be giuen to the poor, by an old Prouincial Synod. Tithes how mentiond in Domeſday. Testimonies of payment of them. Henric the thirds grant of the payment of tithe of Hay & Mills out of all his demesnes. The beginning of Parochi-all payment of Tithes in common and establisshed practice in England. How that common assertion; that euery man might haue disposed his tithes at his pleasure, before the Councell of Lateran, is true and to be vnderstood.*

**T**He Laws of this Kingdom for payment of Tithes, and the originall of *Parochi-all right* to profits accruing within the limits

limits of euery Parish Church (which were, after Lay foundations grew common, distinguished according to the adiacent possessions and tenancies of the Founders, and their Farmes, Mannors, Towns, and the like) being hitherto declared; the *Practice* of the times remains to be also discovered.

I. In that, something also is obseruable among the Ancients of this Kingdom of a kind of Tithing, related to haue been where Christianitie was not yet receiued. Some of them tell vs of *Cedwalla* King of the *West-Saxons*, that before his being made *Christian* (about the yeere D.C: LXXXVI.) he tithed all his spoiles of Warre to the Deitie. So the Monk of *Malmesburie*. *Arduum memoratu est*, saith he, *quantum etiam ante baptismum inseruiret pietati, vt omnes manubias, quasi iure prædatorio in suos vsus transcripserat, Deo decimaret.* neither, if he did so, was it without some example of his Ancestors the *German-Saxons* (whence *England* was chiefly filled) who were wont to sacrifice to *Neptune* (I think) the Tenth of all captiues taken in their pyracies and incursions made by Sea vpon the *Gaules* specially. so saies my Autor, that liud about the time of the *German-Saxons* first arri-uall here. his \* words, of them are. *Præterea priusquam de continenti in patriam vela laxantes, hostico mordaces anchoras vado vellant, mos est remeaturis Decimum quæque captorum per aquales*

a Sicut, spoli-  
um dicitur, Epist.

& cruciarias pœnas, plus ob hoc tristi quod superstitioso ritu, necare superque collectam turbam perituro-  
rum mortis iniquitatem sortis equitate dispergere. Talibus se ligant votis, victimis solvunt: & per huiusmodi non tam sacrificia purgati quam sacrilegia polluti, religiosum putant cædis infausta perpetratores, de capite captiuo magis exigere tormentum a quam pretia. Neither, I think, is any other expresse mention of this their Tithing, among ancient monuments. and, for that their sacrificing to *Neptune*; indeed the Autor *Apollinaris* here mentions him not. but, it being done at Sea and per *aquales* (for so is the true reading, although some there read *aquales pœnas*) you may wel coniecture it was to *Neptune* or to their supposed Deitie of the Sea. and thus the most learned and noble *Monsieur Sauaron* in his notes vpon *Apollinaris*, expresse also makes it a sacrifice to *Neptune*. and although it be true that among their gods we find none namd, that is denoted to answer to *Neptune*, yet, that some Deitie of the same nature, that is some great Sea god was in their superstitions, may be easily collected not only from this relation of their cruell deuotions, but also from their wondrous and accurat obseruation of the ebbs and floods (called by them *Ledons* and *Malins*) which were the <sup>b</sup> chief Directors of their account of times, as the Sun and Moons motion hath euer been to other Nations. which doubtlesse was no small cause that  
the

<sup>b</sup> Videtis Ioseph.  
Scalig. de Emen-  
das. Temp. lib. 2.  
& lib. 1. de Mira-  
bilibus S. Scriptu-  
re D. Augustino  
falsò ascriptum  
&c.

the Sea was to them reputed a Deitie, as the Sunne and Moone also, before other Creatures, in the ancient Theologie of the *Gentiles*. But for that of *Cedwalla*; let it be vpon *Malmesburies* credit, that he tithed his spoyles. *Bede*, who might better haue knowne it then *Malmesburie* could, relates no such thing of him. He sayes only, that when he conquerd the Isle of *Wight*, according to a vow that hee made to the Deitie, hee gaue for the Lords vse, the fourth part of the Isle (that is, C C C. Hides or Plough-lands of M C C.) and of his Martiall gaines, to *Wilfrid*, Archbishop of *Torke*, then being in those parts in banishment, and Bishop of *Selesey*. And \* *Fridegod*, that in the *Saxon* times wrote the life of *Wilfrid* in Verse, sayes hereof only by Apostrophe to *Cedwalla*,

*Tu quoque Pontificem multâ tellure beâssi,*

and mentions no more in particular. That which in the Latin *Bede*, in this storie, is called *Familia*, is *hÿo* in the *Saxon*. And perhaps only such a kind of giuing a fourth, or any part, vpon vow to the Lord, was in that passage of *Malmesburie* vnderstood for Tithing. Why might it not, as well as the foure Thraues of Corne of euerie Plough-land, in the East-riding of *Torke*, giuen by King *Athelstan* to the Church of *S. Iohn* of *Beuerley* (which came, on the other side, not neer to the Tenth) are stiled *Decimæ* in a Bull of one of the Pope *Gregories* (I thinke the ninth) which

c. M. in Biblioth.  
Cotton. de quo  
apud Malmesbur.  
lib. 1. de gest. Pon-  
tific. fol. 114. a.

which I haue seen transcribed. As if *Decima* in one notion had signified any kind of reuenue, deuoutly offered to holy vses.as,vpon other reasons, *Augustinus* denotes also *tributus* among the *Greeks*. Those foure Thraues of euery Ploughland were, before that Grant, payable into the Kings Auenarie <sup>d</sup> by custome of the Countrey. And in *Atbelstans* Charter (as I <sup>e</sup> found it transcribed) they were thus exprest,

*à Fulcardus Dornenſ. de uita Chimerac. l. de Beuer. l. de uacens M. in Biblioth. Cotton. e M. in eodem Biblioth.*

ða þorþne ðnaue by heuen cýng  
Of ilc a plou of Ertþedýng.

And for that more generall notion of *Decima* or *Decimatio*, I haue seen the transcript of a Deed made <sup>f</sup> by *Robert de Hesel* to the Monasterie of *Giseburne* in *Torkeshire*, wherein hee giues *duas garbas de tota terra quam de nouo colui in Territorio de Hesel postquam illam tenui aut quam ego de cætero colam vel heredes mei, ita vt Decimatio hæc cedat in fabricationem Ecclesiæ noue de Giseburne*. Here the gift of two Sheaues is called *Decimatio*.

*f Chartular. M. Monasterij de Giseburne in dict. lib.*

II. For the practice of payment among Christians, both *Britons* and *Saxons*; might wee belecue the common tale of that *Augustine*, the first Archbishop of *Canterburie* Prouince, his comming to *Cometon* in *Oxfordshire*, and doing a most strange miracle there, touching the establishing of the Doctrine of due payment of Tithes, wee should haue as certain and expresse auto-



authoritie for the antient practice of such payment, as any other Church in Christendome can produce. But as the tale is, you shall haue it, and then censure it. About the yeer (they say) D C. *Augustine* comming to preach at *Cometon*, the Priest of the place makes complaint to him, that the Lord of the Mannor hauing been often admonished by him, would yet pay him no Tithes. *Augustine* questioning the Lord about that default in deuotion; hee stoutly answered, That the tenth Sheaf doubtlesse was his that had interest in the nine, and therefore would pay none. Presently *Augustine* denounces him excommunicate, and turning to the Altar to say Masse, publicquely forbad, that any excommunicat person should be present at it, when suddenly, a dead Corps, that had been buried at the Church doore, arose (pardon me for relating it) and departed out of the limits of the Church-yard, standing still without, while the Masse continued. Which ended, *Augnstine* comes to this liuing-dead, and charges him in the name of the Lord God to declare who hee was. Hee tells him, that in the time of the *British* State he was *huius villæ Patronus*, and although he had been often vrged by the Doctrine of the Priest to pay his Tithes, yet he neuer could be brought to it; for which he died, he sayes, excommunicat, and was carried to Hell. *Augustine* desired to know where the Priest that excommunicated him, was

buried. this dead shewed him the place ; where hee makes an inuocation of the dead Priest, and bids him arise also, because they wanted his help. The Priest rises. *Augustine* asks him, if he knew that other that was risen. he tells him, yes ; but wishes he had neuer known him. for (saith hee) he was in all things euer aduerse to the Church, a detainer of his Tithes, and a great sinner to his death, and therefore I excommunicated him. But *Augustine* publicly declares, that it was fit mercie should be vsed towards him, and that he had sufferd long in Hell for his offence (you must suppose, I thinke, the Autor meant Purgatorie) wherefore hee giues him absolution, and sends him to his graue, where hee fell againe into dust and ashes. Hee gone, the Priest new risen, tells, that his Corps had lien there aboute C. LXX. yeers; and *Augustine* would gladly haue had him continue vpon earth againe, for instruction of Soules, but could not thereto entreat him. So he also returns to his former lodging. The Lord of the Town standing by all this while, and trembling, was now demanded if hee would pay his Tithes ; but he presently fell down at *Augustines* feet, weeping and confessing his offence; and receiuing pardon, became all his life time a follower of *Augustines*. Had this Legend truth in it, who could doubt, but that payment of Tithes was in practice in the Infancie of the *British* Church ? The Priest that rose here from the dead,

dead, liud (if he euer liud) about C C C. X X X. after Christ, and would not surely haue so taxed the Lord of this Mannor only, if the payment had not been vsually among other good Christians here, not taught only, but performed also. Neither need I admonish much of the autoritie of it. the whole course of it directs you how to smell out the originall. Beside the common Legend of our Saints, it is in some Volumes put alone, for a most obseruable Moniment. and I found it bound vp at the end of the Ms. life of *Thomas Becket*, Archbishop of *Canterburie*, written by *Iohn de Grandisono*. and it remains in the publike Librarie of *Oxford*. There also you haue it related in *Ioannes Anglicus* & his *Historia Aurea*, and, in the Margine, are noted to it these words: *Hoc miraculum videbitur illis incredibile qui credunt aliquid Deo esse impossibile. sed nulli dubium est quod nunquam Anglorum dura ceruices Christi iugo se submisissent nisi per magna miracula sibi diuinitus ostensa*. But let the truth be as it will, I doe not beleeeue, that the fable can be found, nor any steps of it, aboue C C C C. yeer old at most. But, to leaue such testimonie, no doubt can be, but that some practice of payment was here vsed very anciently, which (beside the deuotion to be supposed in Christians, and the Doctrine of ancient Fathers, which, verie likely, wrought here as in other Western Churches) might be collected, by good probabilitie,

g. Ms. part. 2.  
lib. 17. cap. 72.

out of those Laws alone of the *Saxon* times which questionlesse were not without some effect, being so often renewd. Neither is the memorie of some use of payment here, in these more elder times, omitted in the reliques of antiquitie. In the Ms. life <sup>b</sup> of the *British* Saint *Cadoc*, among some Laws of his Church of *Lhancaruan*, which seem to be attributed to his time (which falls about our *Augustine* or before) one is, *Quicumque decimauerit, debet diuidere in tres partes. primam dabit Confessori, secundam Altari, tertiam orantibus pro eo.* but the Autor of this whence we haue it, wrote not till after the *Norman* Conquest. And it is reported also of *Eadbert* Bishop of *Lindisfarn* or *Holy Iland*, that he was *Eleemosynarum operatione* (as <sup>i</sup> *Bede* words are) *insignita vt iuxta legem omnibus annis Decimam non solum quadrupedum, verum etiam frugum omnium & pomorum necnon & vestimentorum partem pauperibus daret.* which words are almost repeated also by *Turgot* Prior of *Durham*, that wrote the storie of that Bishopricke. But here no custom of the place or common use is noted, but only a speciall deuotion of *Eadbert*. and for that of *iuxta legem*; you must vnderstand it of *Moses* Law. and so is it exprest in the *Saxon* Copie of *Bede*, where I read that he did it *after Moyses*, and that is, according to the Law of *Moses*. Neither is the regard in those times had to a tenth (although not yearly) to be

<sup>b</sup> In *Bibl. Com.*

<sup>i</sup> *Eccl. Hist. lib.*  
9. cap. 29.

<sup>k</sup> Ms in *Biblioth.*  
*Cotton.* & apud  
*V.C. Th. Allen,*  
*Oxon.*

to be paid as for a soules ransom, to the poor, after the death of euery Bishop out of his estate, to be here wholly neglected. Out of this regard may be inferd that therein also the Tenth was reputed as a sanctified part. And wee learne it out of a Councell <sup>1</sup> held in D C C C. "XVI. In loco famoso (*as the words of it are*) "qui dicitur *Celichyth*, Præsidente verò VI-fredo Archiepiscopo cæterisque adsedentibus australibus Anglorum Episcopis, *which hath this Canon*. Iubemus, & hoc firmitèr statuimus ad seruandum, tam in nostris diebus quamque etiam futuris temporibus, omnibus successoribus nostris qui post nos illis sedibus ordinentur quibus nos ordinati sumus, vt quandocunq; aliquis ex numero Episcoporum migrauerit de seculo, tunc pro anima illius præcipimus ex substantia vniuscuiusque rei Decimam partem diuidere ac distribuere pauperibus in eleëmofynam siue in pecoribus & armentis seu de Ouibus & Porcis vel etiam in Cellarijs, necnon omnem hominem Anglicum liberare qui in diebus suis sit seruituti subiectus, vt per illud sui proprii laboris fructum retributionis percipere mereatur & indulgentiam peccatorum. And for the succeeding times of the Saxons; we may well coniecture a practice of payment out of King *Knouts* Epistle sent in M. XXXI. as he departed homeward from *Rome*, by *Liuing* Abbot of

<sup>1</sup> Ms. (compaſſ.  
inter Monumenta  
Eccleſiæ London.  
in Biblioth. Cant.)  
cap. 10.

*Tanyſtok* to *Athelnoth* and *Alſrique*, the two Archbiſhops by name, and to the reſt of the Biſhops & Baronage of *England*. he therein ſtraitly charges them all, that according to the ancient Law they ſhould take care that Tithes were duly paid among other Church reuenues, wherein if he found default at his coming they ſhould expect ſeuere puniſhment. the words were:

“ Nunc <sup>m</sup> igitur obteſtor omnes Epiſcopos me-  
 “ os & regni mei præpoſitos per fidem quam mi-  
 “ hi debetis & Deo, quatenus faciatis vt ante-  
 “ quam in Angliam veniam, omnium debita, quæ  
 “ ſecundum legem antiquam debemus, ſint per-  
 “ ſoluta, ſcilicet eleemoſyna pro aratris, & De-  
 “ cimæ animalium ipſo anno procreatorum, &  
 “ Denarij quos Romam ad ſanctum Petrum de-  
 “ betis, ſiue ex vrbibus ſiue ex villis, & mediante  
 “ Auguſto Decimæ frugum, & in feſtiuitate S.  
 “ Martini primitiæ ſeminum ad Eccleſiam ſub  
 “ cuius Parochia quiſq; degit quæ Anglice *Curc-*  
 “ *ſcet* nominatur. Hæc & alia, ſi cum venero,  
 “ non erunt perſoluta, regia exactione ſecundum  
 “ leges in quem culpa cadit diſtriçtè abſq; venia  
 “ <sup>a</sup> comparabit. and the Monk that relates it,  
 adds, *nec dicto deterius fuit factum*. But what e-  
 uer may be out of theſe teſtimonies concluded,  
 it is noted among the Laws attributed to *Ed-*  
*ward* the Confefſor, that what through the cold-  
 neſſe of deuotion, what through the neglect of  
 demanding Tithes by the Clergie, that were o-  
 therwiſe

in Apud G. Mal-  
 merſbur degeſſ.  
 Reg. Angli. lib. 3.  
 cap. 11.

n Forſan Com-  
 penſabit.

therwise grown very rich in reall endowments, the practice of payment of them was much diminished. *Sed postea instinctu diaboli* (are the words which follow immediatly what is before in the Chapter of Laws *§. XIII.*) *multi Decimam detinuerunt, & Sacerdotes locupletes negligentes non curabant inire laborem ad perquirendas eas, eo quod sufficienter habebant sue necessaria vite. Multis enim in locis modo sunt tres vel quatuor Ecclesiæ, ubi tunc temporis vna tantum erat, & sic ceperunt minui.* but we are not sure that this addition to the Law is as ancient as the Confessor. I think it indeed rather of somewhat later time. yet doubtlesse the generall practice of payment according to those ancient Laws, howeuer it might be in elder times, was about the *Norman Conquest*, much discontinued, which may be specially obserued out of that book of *Domesday* (the originall Copie whereof yet remains in the Receipt of the Exchequer) in which the Possessions and Reuenues both of the Clergie and Laitie were accounted and valued, by the othes of Enquests taken in euery Countie vpon commission, and so returned thither about the end of the Conquerors raign. There, frequently enough, Churches are mentioned by the words of *Ibi Ecclesia & Presbyter*, or such like; and how many Carues or Hides of land, how many villans, and other endowments and reuenues belongs to them, are reckond, with their values.

But



But very rarely any Tithes among those Church reuenues are there found. if none at all had been namd, it might haue been thought that they had been omitted as a more sacred profit, then was fit to be taxed in such a Description. But some, although very few, occurre in it. as vnder *Terra Osberni Episcopi* in *Boseham* in *Suffex*, you may there find that *Decimam Ecclesiæ Clerici tenent, & valet XL<sup>li</sup>* where the lest value of the Man- nor is made at *XL<sup>li</sup>.per annum.* in *Hampshire* vnder *Terra Osberni Episcopi*, you read *Ecclesia S. Michaelis de Monte tenet de Rege* in *Basingestoches Hundred*, *vnam Ecclesiam cum 1. bida & Decimam de Manerio Basingestoches. Ibi est Presbyter.* So in the same Shire vnder *Terra Regis*; *Iose Rex tenet Wallope &c. ibi Ecclesia, cui pertinent vna bida & medietas Decimæ Manerij & totum ° Curset, & de Decima villanorum XLVI. denarij & medietas agrorum. Ibi est adhuc Ecclesiola ad quam pertinent VIII. acræ de Decima.* for these VIII. acres of Tithes, see before in the Chapter of Laws *ð. IX. X. and XI.* And in the same Shire also among the Abbot of *Lire's* possessions, the Tithe of *Cladford* is reckond, as also of *Adrintone.* and also the Tithes of *Stanham* are possessed there by one *Richerius* Parson of the Church of *Stanham.* and vnder *Terra Canonicorum de Tuinham*, is found, *Ad hanc Ecclesiam pertinet tota decima de Twinham, & tertia pars Decimarum de Holchest.* and  
in

in the Isle of *Wight* there, VI. Churches, belonging to the Abbey of *Lire*, *Decimas habent de omnibus redditibus Regis*. So in *Bedfordshire* the Church of *S. Marie de Cormelys*, hath diuers Tithes among its reuenues. But the mention of Tithes where Churches are neuertheless spoken of, is but very seldome through that whole Description. and indeed in certain Counties as *Somerset*, *Deuon*, *Cornwall*, and some few others, you shal rarely haue a Parish Church noted, but in others, very often Churches are, but very few examples of their hauing Tithes. Sometimes also grants of Tithes by Lay owners are there mentioned, out of the vse of which it may be well thought that the moities or third-parts of tithes belonging to this or that Church, had their beginnings. But thereof more particularly in the next Chapter, where we speak of arbitrarie Consecrations. And in most Appropriations of Parish Churches made in the *Saxon* times (the ancient course being to grant, in appropriating, *Ecclesiam cum Decimis*) no mention is of *Decimæ*, but other possessions of the churches granted are most particularly inserted in the instruments; of which some examples are published in *Ingulphus* Abbot of *Crowland*, and very many occurre in Chartularies of old Monasteries. But see also for this matter the authorities anon brought to another purpose in the XIV. Chap. §. 2. For the following age (besides some examples related in

*Mr. in Bibl. Cant.*

p. Ante alia  
Vetr. monumenta  
consulas si placet  
Cartul. Rossensi  
Ecclesie, ibid.

the next Chapter, out of which some kind of known payment at least, to some Churches, may be without difficultie collected) that wee may here omit also the diuers Appropriations, in the P times presently ensuing the Conquest, of *Ecclesie cum Decimis*, which denotes either some payment or interest of Tithes settled by Consecrations in them; In the life of *S. Cuthbert* Bishop of *Lindisfarn* written by some Monk vnder *Hen. I.* it is related, that in that Autors time a great penurie of food being in *Lindisfarn* (that is, in *Holy Iland*) the Sea left vpon the shore *LXV.* fishes, wherof euery one was a sufficient draught for a yoke of Oxen; and that a Monk came to the Lord of the adioining soile, and desired the Tenth of that abundance so sent by the hand of God. *Saltem Decimas* (as the words are) *quod Legis & Prouinciæ consuetudo exigebat, Ecclesiæ requisivit, sed omnibus negatis rubore simul & dolore confusus discessit.* here the practice of payment is noted by *Prouinciæ consuetudo.* and about the same time the fashion about *Abingdon* was to pay the Tithes to the Abbey (due either as it was an ealoeþ Minstre by *K. Edgars* Law; or as they had been consecrated; whereof more in the next Chapter) by whole Hides and Acres. *His diebus*, saies the Chartularie of that Abbey, *raro à quoquam Decima messium vi lege præcipitur in Abbacia ipsa dabatur, sed aut de Hidagio XL. manipuli quos vulgò garbas vocant, aut Decima sue*

*sue cultura Acrâ porrigebantur.* and for the time vnder Henrie the second; an Epistle sent from Rome by Pope Alexander the third, to the Bishops of Worcester and Winchester, recites the generall institution (which may be vnderstood for custom) of the Church of England to be that euery Parishioner should pay his Tithe corne to his own Parish. *Cum homines* (so it speaks) *de Hortuna secundum generalem Ecclesie Anglicane institutionem, de frugibus suis nouem partibus sibi retentis Decimas Ecclesie cuius parochiani sunt sine diminutione soluere teneantur &c.* wherewith agrees the preamble of his Decretall, remaining yet in the body of the Canon<sup>r</sup> Law. there he begins with *Quod cum Parochiani vestri* (that is all the Parishioners within the Diocese of Canterburie) *Decimas bonorum suorum consueuerint Ecclesijs, quibus debentur, cum integritate persolvere; nunc tam laudabili consuetudine prætermittâ quidam ex eis de lana & de feno, & de prouentibus molendinorum & piscariarum Decimas ipsis Ecclesijs subtrahere non verentur.* hereto adde that of one of his predecessors<sup>r</sup> Hadrian the fourth to the Archbishop of Canterburie, where a Parochiall payment of Tithes seems to be spoken of as of knowu right. and in a composition made by the Abbot<sup>r</sup> of Euesham a Iudge Delegat from Pope Honorius in M. CC. XX. it is taken cleer that certain Tithes *de iure communi pertinent ad Ecclesiam de Leonminstre eo quod*

q In Append. ad  
Concil. Later.  
part. 4. cap. 4.

r Extr. tit. de Or.  
canon c. 5. peruenit.

f Bible. 4. Com.  
mijum off.

r In Regest. Mon.  
Leonmistr. sine  
Rading in Bibl.  
Cotton. & vide  
App. a. Concil.  
Lut. part. 48. cap. 1.

*ſite ſunt infra limites Parochie Eccleſie de Leon-*  
 minſtre, according as the Texts of the Canon  
 Law of about that time expreſſy alſo affirme.  
 The compoſition was between ſome of the Di-  
 oceſe of Hereford, and the Abbot of Wigmorè.  
 like admiſſions of that Law are in other inſtru-  
 ments, in the Leger book of Reading, for the  
 Church of Lemſter. But conclude not out of  
 them for practice, without obſervation of the ex-  
 amples of the next Chapter. And it appears that  
 in 11. Hen. 3. a ſpeciall grant was made by the  
 King, that Tithes of Hay and Mills ſhould be  
 paid from thenceforth in all his demefnes lands  
 (that is al occupied either by his Villains or Bai-  
 lifes, or by Leſſees that came in after the grant)  
 which before then had not bin paid. *Domin<sup>o</sup> Rex,*  
*ſaies the <sup>u</sup> record, de Concilio Archiepiſcoporum*  
*& Episcoporum ſuorum conceſſit vt Decime ſeni*  
*& molendinorum de ſingulis Dominicis ſuis in re-*  
*gno ſuo de cætero præſtentur. Et mandatum eſt bal-*  
*liuis de Cotſham quod de Dominico ſuo de Cor-*  
*ſham Decimas ſeni Eccleſie de Cotſham dari fa-*  
*ciant. T. R. apud Weſtmonaſt. XVIII. die May.*  
 and according to this, were diuers cloſe Writs  
 ſent out in the following yeeres. Of the times  
 afterward; wee find more certain testimonies  
 ſhewing the common right of Tithes and that  
 Parochiall; as the Writ of *Indicauit*, grounded  
 vpon the Statut of *Circumſpectè agatis*, made in  
 13. Ed. 1. diſcouers, that in and before that time  
 the

*u* Rot. Clauſ. 11.  
 Hen. 3. pari. 3.  
 membr. 9. in Dorſo.  
 & Rot. Clauſ. 12.  
 Hen. 3. membr. 7.  
 in Dorſo. & Clauſ.  
 17. Hen. 3. Dorſ. 16  
 & Dorſ. Clauſ. 20  
 Hen. 3. m. mtr. 24.  
 & Clauſ. 21. H. 3.  
 m. p. r. 10.

the Parochiall Tithes were most knowne re-  
uenue of euery Church, with which agrees the  
ancient and present forme of the Count, in  
a Writ of Right of Aduowson of a Parish  
Church, wherein the Esplees are chiefly laid  
in Tithes, because the *Aduowson of the whole  
Tithes, is no other then the Aduowson of the  
Church*, as Iudge Stoner \* sayes in *Corbets* case.  
And by the practice of the Kingdome, it became  
cleer Law (as it remains also at this day) that re-  
gularly, if no other title or discharge, to be spe-  
cially pleaded or shewed in the Allegation of the  
Defendant, might appeare, euery Parson had a  
common right to the Tithes of all annuall en-  
crease (prediall and mixt) accruing within the li-  
mits of his Parish, without shewing other title  
to them in his Libell. That appeares frequently  
in our Yeer-books, where the Issues, taken vpon  
Parochiall Limits, are reported. But wee may  
here not vntimely remember an occurrence in  
the Petitions 7 of the Parlament of 33. Ed. 1.  
touching the Tithes of *Cornwall*, challenged by  
the Parsons and Vicars there. *De Personis &  
Vicarijs* (sayes the entrie) *petentibus Decimam in  
Cornubia, vbi Rex soluit annuatim Episcopo Ex-  
oniensi pro Decima prædicta; ita responsum est.  
Fiat sicut consuevit tempore Comitum & Regis.*  
The Earle and the King there meant, are that  
great *Richard*, and *Henry* the third. But this  
must not be vnderstood of the Tithes generally

x 4. Ed. 3. fol. 27. a.

y In Codicis Ver.  
Mss. apud V.C.I.  
Borough. Scruator  
in Arce Lond.  
prædictum.

in the Countie, although the words might import as much, as if the Bishop had receiued them all. It was doubtlesse for the Tithe of the Stannaries only. For it is true, that the Bishop of *Excester* had the Tithe of the profits or rent of the Stannaries there anciently giuen and paid him. and thereof testimonie enough <sup>z</sup> is vpon record. and to that purpose also is that Marginall Note, in the Book of those Parliaments, *Stagmen Cornubie*. cleerely, that goes for the *Stannum Cornubie*, as *Stagminatores* for those of the Works. For the time of *Edward* the third and *Richard* the second (beside that of the Tithes of *Silua cedua*, or Copis Wood, whereof enough before, in the Laws that belong to it) you may remember those complaints of *Chaucers* Plowman against the Clergie of his age.

<sup>z</sup> Vide Rot. Fin.  
q. Hen. 3. membr. 1.  
& Claus. 5. Hen. 3.  
membr. 6.

*Their Tithing and their Offering both  
They clemeth it by possession,  
Thereof nil they none forgo,  
But robben men by ransome.*

And then, of Parish-Rectors.

*For the Tithing of a Ducke,  
Or an Apple, or an \* Aye,  
They make men swere vpon a Boke,  
Thus they foulen Christes say.*

\* Eggs.

And,



And,

*He woll haue Tubing and Offering,  
Maugre whoſoeuer it grutch.*

And in the Freres Tale,

*And ſmall Tubers they were ſoule yſpent*

before the Archdeacon. To theſe (for Perſonall Tithes) you may adde that of Mōrtuaries, payable in Beaſts regularly before the Statute of 21. Hen. 8. which were reputed due vpon the generall preſumption of euery Deſuncts negligence in payment of his Perſonall Tithes. The Mortuarie was therefore (by the Canons) to bee preſented with the body at the Buriall, as a ſatisfaction of omiſſion, and negligence in paying to the Church <sup>a</sup> thoſe Perſonall Duties. And thence was it ſtilled *Corſe-preſent*; according whereto, I haue ſeene a Juſtification in the Eire of *Derby* of 4. Ed. 3. to an Action of Treſpas brought by *Thomas* of *Gouſtill* againſt the Parſon of *Whitwell*, for the taking of a Horſe; in which the defendانت pleades, that it was the Horſe of one *I. Leyer* his Pariſhioner that died, *Et que le dit Chiuall enſemblement oue autres choſes fuſt meſnes & preſent al Eſgliſe come en noſme de Mortuarie deuant le corps meſme le iour &c. & il come Parſon les priſt & receut auxi come cuſtome de la terre & de Seint Eſgliſe eſt &c.* Theſe ſhew plainly the receiued and acknowledged

<sup>a</sup> *Lindſe. M. de conſuetudine, c. Statutum, l. f. de 21. Hen. 8. cap. 6.*

ged Parochiall right, in the practice of those times, which hath to this day continued. neither is it at all necessarie to adde more for the vni-forme continuance of it. Sauing only, that where any Statute hath made a discharge, or Prescription or Custome hath settled a *Modus Decimandi* or certain quantitie payable, though neuer so little, for the Tithe, there, by the Laws of the Kingdome, the owner is not bound to pay other Tithe, then the Statute or Custome or Prescription binds him to. Which yet must be so vnderstood in the case of Lay men, that Custome or Prescription founded in their possessions as Lay, cannot wholly discharge the Tithe, or be *de non Decimando*, but may well be *de modo* only; otherwise is it in the case of spiritual persons, that may by the common Law be by Prescription wholly, discharged and prescribe *de non Decimando*. And this is regularly cleer Law. But at what time this Parochiall and common right became first settled with vs in practice, is not so cleerly known. and though those Decretals, before cited, suppose it a thing of custom here in *Henry* the II. his time, yet if credit might be giuen to the report of those *English* Monks, which (as wee haue before related) referd the ordaining of Parochiall right in Tithes to the Generall Councell of *Lions*, held vnder *Gregorie* the tenth, then wee might conclude the right of it no anciēter then about the beginning of our *Edward* the first. But what-  
euer

eu<sup>er</sup> they meant, it is certaine, that some, both Synodall and secular Lawes of this Kingdome, had, before that time, ordained this right. Yet indeed it will be found, that the Practice of it here (as also in other Countries) was not settled till some M. C C. yeers after Christ, or, at least, was, for many yeers before, & some after, discontinued. Which may partly be collected out of that Decretall of Pope *Innocent* the third, sent into this Kingdome, and dated in the *Lateran*; which is before at large in the Chapter of Laws, §. XXIII. For howeuer the recitals are in those of *Alexander* the third (the one speaking of *Generalis institutio* for Parochiall payment, which, as it may denote common custome, so also may be vnderstood for some Law of the Kingdome, as that of *Edgars*, *Knouts*, the Confessors, or some other before related; the other, of *Con-sueuerint Ecclesijs quibus debentur*, which doth not of necessitie include a generall practice of Parochiall payment, but may as well denote the dutie that comes from arbitrarie Consecrations; of which, in the next Chapter) it is most certain, that before about the yeer M. C C. after Christ, that is, about the time of King *Iohn*, it was most commonly practised by the Laitie, to make arbitrarie Consecrations of the Tithes of their possessions to what Monasterie or Church they would, sometimes giuing halfe, sometimes a third part, and at their pleasure all, in perpetuall

O o

right,

right, or otherwise, according to the nature of those Consecrations in other Countries; of which, enough is before related. Neither doth expresse testimonie hereof want in that Decretall of *Innocent* the third, made against these kind of arbitrarie Consecrations. *Multi* (saith hee) *in Diocesi tua* (that is the Prouince of *Canterburie*) *Decimas suas pro sua distribuunt voluntate*. Neither may you vnderstand it, as if it had bin done by the waiward opposition of some only against the receiued and allowd Laws of the Kingdome. For notwithstanding all those Ordinances, both Secular and Synodall, anciently here made for due payment, it is cleer, that in the time before about that *Innocent*, it was not only vsuall, in fact, for Lay men to conuey the right of their Tithes, as Rents-charge, or the like, to what Chutch or Monasterie they made choice of, but by the course and practice of the Law also of that time (both Common and Canon, as it was here in vse) such conueyances were cleerly good, and what was through them so acquired, was continually, and is to this day (except some particulars, which either the Popes autoritie of later time, or new Cōpositions or Grants, or the like, haue altered) enjoyed by the Churches, that, yet remaining, had portions so anciently giuen them, or by the King or his Grantees of impropriated Tithes; very many of which, had their chiefe originall from those arbitrarie Consecra-  
tions

tions (which you may well call Appropriations of Tithes) and not from the appropriating only of Parish Churches, as some out of grosse ignorance, with too much confidence, deliuer. But thereof you may see more in the examples of the next Chapter. where, for most apparant prooffe of the practice of arbitrarie Consecrations in those times, Moniments enough are collected. This arbitrarie disposition, vsed by the Laitie as well *de iure* (as the Positiue Law, then receiued and practiced, was) as *de facto*, is that which *Wicclef* rememberd in his complaint to the King and Parliament vnder *Richard* the second. His words are : *A Lord God, where this be reason, to constrain the poor people to find a worldly Priest, sometime vnable both of life and cunning, in pompe and pride, couetise and enuie, glottonie, drunkennesse and lecherie, in simonie and heresie, with fat Horse, and iolly and gay Saddles and Bridles, ringing by the way, and himselfe in costly Clothes and Pelure, and to suffer their wiues and children, and their poor neighbours, perish for hunger, thirst, and cold, and other mischiefes of the world. A Lord Iesu Christ, sith within few yeeres, men payed their Tithes and Offerings at their own will free to good men, and able to great worship of God, to profit and fairenesse of holy Church fighting in earth. & Where it were lawfull and needfull, that a worldly Priest should destroy this holy and approued custome, constraining men to leaue*

b Why is this rea-  
son not a lawfull?

c Why is it law-  
full?

this freedome, turning Tithes and Offerings into wicked vses. But what hee calls a few yeers, will fall out to be about CC. for hee wrote about the yeer M.C.C.C.XC. With him well agrees some passages in our Yeere-bookes of the times before him. As in 7. *Ed. 3. fol. 5. a.* *Parning* truly affirms, that in *auncien temps deuant vn Constitution de nouelle fait per le Pape, vn Patron d'un Esglise puit granter Dismes, deins mesme le Paroche a vn autre Paroche.* And *Herle* there in his answer seemes to admit it cleere. So also (touching others as well as Patrons) *Lodlow*, Iudge of Assise in 44. *Ed. 3. fol. 5. b.* *En auncien temps chescun home purroit graunter les Dismes de sa terre a quel Esglise il voudroit. Quod verum est,* sayes Iudge *Brooke*, in abridging the case. But what new Constitution of the Pope is meant there by *Parning* & some later <sup>d</sup> Books tells vs, that from the Councell of *Lateran* the first alteration of that course of arbitrarie disposition came. But plainly, no Councell of *Lateran* hath any Canon that altered the Law in it, except that vnder *Alexander* the third, before spoken of in the end of the sixt Chapter, may haue place here: which, indeed, the Canonists will not endure, vnlesse you restraints it only to ancient Feudall Tithes. And they suppose, euerie man might haue arbitrarily conueyed, before that Councell, his Feudall Tithes to what Church he would. And so expressly sayes our  
*Lind-*

d Vide 10. Hen. 7.  
 fol. 18 a. 7. Ed. 6.  
 Dyer fol. 84. b. &  
 Coke Report. 3.  
 fol. 44. b.

\* *Lindwood. Ante illud Concilium bene potuerunt Laici Decimas in feudum retinere & eas alteri Ecclesie vel Monasterio dare; non tamen post tempus dicti Concilij.* But if those which with vs talk here of the Councell of *Lateran*, meane that vnder *Alexander* the third, and apply it generally to arbitrarie Consecrations of new Tithes, not feudall, I doubt they are much neerer the true meaning of that Councell then any of the Canonists. especially while they speake of this Kingdome. for arbitrarie Consecrations before about the time of that Councell are found here infinite, as presently shall be shewd. But of ancient feudall Tithes (howeuer they were common in other States) scarce any mention at all or tast is with vs. but thereof more in the XIIII. Chapter. And, it may be, that when, from the Canonists, some of our Lawiers had learned that feudall Tithes might haue been conueied before that Councell arbitrarily by the owner; and saw withall that scarce any signe was of feudall Tithes in this Kingdom, yet an abundance of old arbitrarie Consecrations, the vse whereof ceased about the time of the Councell; in the words of it no regard or mention being had of feudall but only Tithes in generall; they concluded (who sees enough why they might not?) that before that Councell euery man might haue arbitrarily disposed of his tithes. that is such tithes as were not formerly setled by any ciuill Title.

*c. Tit. de locat. & conducto c. licet, verb. portionem.*



(Quam vide  
sup. cap. 8. §. 23)

But if this will not be allowd for the Law of change of those arbitrarie conueiances; why may it not first be that *Parning* by his *Constitution de nouvelle fait per le Pape*, meant that <sup>e</sup> of Pope *Innocent* the third, sent to the Archbishop of *Canterburie* in King *Iohns* time (and perhaps it was soon after receiud into the Prouince of *York* either by imitation or through the power Legatin, which the Archbishop of *Canterburie* commonly exercised through the whole Kingdome) to command a Parochiall payment? For also by the name of a Constitution newly made by the Pope, some such thing rather then a Canon of a generall Councell, is perhaps denoted. And then why might it not happen that the Decretal of *Innocent* the third, bearing date in the Church of *Lateran* should be thence denominated, and that afterward those which truly vnderstanding it, called it therefore a *Lateran* Constitution, gaue cause of mistaking to others that took it for a Constitution of a generall Councell of *Lateran*? especially too because it was about the time of the generall Councell of *Lateran* (held vnder the same Pope that sent it) of which more notice hath been taken in our Law then of any other of that name. and indeed he that affirms that before the Councell of *Lateran* Lay owners might haue disposed their Tithes, *cuiusunque Ecclesie secundum meliorem deuotionem*, as *Dyers* words are, speaks true enough, if his words may receiue this

this easie interpretation. that is, that till about that Councell of *Lateran* they might haue done so; not that the Councell vnder Pope *Innocent* restraind it. but that either the next Councell of *Lateran* before, that is vnder *Alexand.* the III. or the Pope by a Constitution, receiued here from *Rome* and dated in the Church of *Lateran*, about the time of that Council of the yeer M.CC.XV. ordaind the contrarie. so that in this last way the name of the Councell may be a note only of the time about which it was restraind, not of the authoritie whence it was forbidden. Perhaps those Canons of Pluralities, of Exemptions, of the three orders, and some such more which we receiud from that Councell vnder *Innocent*, were brought into *England* at once with this Decretall Epistle; and if so, then also it was no more strange to haue the Decretall afterward titled by the name of a Cōstitution of the *Lateran* Councell, then it happend in the denomination of the Statuts of *Aide de Roy* and *Voucher*, made in 4.*Ed.* 1. euery of which are stiled by the name of *Statutum de Bigamis*. yet only one Law *de Bigamis* receiud out of the generall Councell of *Lions*, is among those Statuts; and that is euen as much a stranger to the rest of the Constitutions bearing the same name with it, as Pope *Innocents* Decretall was to the whole Councell of *Lateran*. Howeuer, it is most cleer (let froward ignorance as it can continue to oppose the assertion)

tion) that for C C. yeers at leſt before about the time of the Councell of *Lateran*, held vnder the ſame Pope, arbitrarie Conſecrations of Tithes with vs were frequent, and practiſed aſwell of poſitiue right (if wee may take that for right, in things ſubiect to human diſpoſition, which generall conſent of the ſtate allowd; as no man that knows what makes a poſitiue right, can deny) as of fact; which becauſe they are beſt conſe-  
 cied of by the particular testimonies and precedents of them, in the following Chapter manie ſhall be tranſcribed, that are all (except one or two in the Prouince of *Torke*; neither is it likely that in euery place here, and by euery man the intent of that Conſtitution was ſuddenly obſerued, and perhaps alſo it was not ſo ſoon alterd in *Tork* Prouince as in this of *Canterbury*, in regard that the Decretall was ſent only to *Canterburie* Prouince) of the time before that Decretall and taken out of the moſt choice and authentique monuments, that may afford help to the diſquiſition of this point ſo litle, ſo not at all vulgarly or indeed any where publiquely diſcouered.

## CAP. XI.

- I. Arbitrarie Conſecrations of Tithes (*before about the time of the moſt known Councell of Lateran*) by conueiance from the owner of all or part to any Church or Monafterie at his pleaſure,

*sure, in examples selected out of monuments of infallible credit.*

- II. *A Writ in the Register intelligible only from those arbitrarie Consecrations. a like example to it out of the book of Osney.*
- III. *The libertie of the Baronage anciently challenged to build Churches in their Territories. Parochiall right to Tithes settled in Practice.*
- IV. *Of Tithes of encrease in lands not limited to any Parish. How by the common Law they are to be disposed of.*

**B**Esides the many testimonies that may be had out of the Portions especially possessed by som Churches or Monasteries, manie of which had no other beginning then from arbitrarie Consecrations, made by owners of Tithes, in two parts, or third parts, or otherwise at their pleasure to any Church or Monasterie; the frequent memorie of Instruments of such Consecrations (made according to the practised Law of the time chiefly interceding from the yeer M. till some yeers after M. C C. of our Sauour) is to be principally obserued in this disquisition. The originall monuments of those elder ages afford vs plentie of thē. And in regard of the easier connexion and more compendious way of deliuerie, we shall rather seuerally follow the singular courses of euery of the Chartularies or other monuments, which tell vs of those kind

of consecrated Tithes, then dispose together e-  
uery arbitrarie Consecration according to the  
order of time. The seuerall Titles of books  
whence we haue them shall chiefly direct in the  
generall order. but neither shall the particular  
time, of euery of these selected examples of Con-  
secration, be omitted.

<sup>a</sup> In Bibl. Cottoni.  
ana.

I. The Chartularie of the Abbey of <sup>a</sup> *Abing-*  
*don* shall obuiously haue first place. In it, in the  
time of *K. William* the second and *Rainald* Ab-  
bot, occurs; that Viuentē prædicto *Rainaldo*  
Abbate, trium Decimationum, Ecclesiæ huic  
facta est vna ab *Herberto* de villa sua *Lakine*,  
appellata *Henrici de Ferrarijs* <sup>b</sup> Milite; scilicet  
frugum, agnorum, caseorum; vitulorum, &  
porcellorum. Quod & *Robertus* filius eiusdem  
post patris mortem confirmans, concedente  
Domino suo prædicto *Henrico*, *Abendoniam*  
venit, pro patris & sui suorumq; salute præ-  
fatam hic Decimationem perpetualiter tra-  
didit; sibi fratribus suis germanis *Huberto* &  
*Stephano* in his fauentibus; etiam istis amicis  
suis videntibus *Quirio* de *Moenais*, & fratre  
eius *Hugone* & *Roberto* filio *Aldulsi* de *Betre-*  
*tuna*. Altera à *Seswaldo* de villa sua *Hildestea*  
caseorum scilicet & vellerum suarum ouium.  
Quod & hæres & filius eius *Frogerus* post eum  
denotè confirmavit. Quæ utræq; Decimatio-  
nes luminaribus & ministerijs Altaris Sanctæ  
Mariæ ab eo die specialiter delegatæ hucusq;  
“ in

<sup>b</sup> L. Milite.

“ in hoc expenduntur. Tertia à *Rotberto* cuius  
 “ erat cognomen *Marmiun*, & à filio ipsius  
 “ *Helto* de villa sua *Henreda*, frugum omnium  
 “ suæ propriæ lucrationis. Sed & post illos à  
 “ *Radulfo* cognomento *Rosel* idem concessum.  
*And then follows Rosel's Charter to that purpose :*  
 “ Ego *Radulphus* agnomento *Rosellus* concedo  
 “ volo atque præcipio seruientibus meis vt se-  
 “ getes meas de *Henretb* deciment ad ostium  
 “ Granciae meæ quæ ibidem habetur & ipsam  
 “ Decimam rectè & fidelitè seruienti S. Mariæ  
 “ deliberent. And this Tithe was in the sole  
 disposition of the Almosner of the Abbey. Out  
 of IV. Hides also lying in the same *Henred*, a  
 consecration of the Tithe had been made before  
 in the time of the *Danish* government, by a  
 “ *Dane*, and is thus there reported. Tempore  
 “ Danorum, fuit quidam eorum qui possidens  
 “ VII. hidas in *Henreda*, propter vicinitatem  
 “ *Abbondoniae* & amorem S. Mariæ Virginis &  
 “ aliorum Sanctorum qui mihi digniter colun-  
 “ tur, dedit Decimam de Dominio eiusdem ter-  
 “ ræ Ecclesiæ S. Mariæ *Abbondonenfi* in eleē-  
 “ mosynam pauperum hoc est de IIII. hydīs;  
 “ quam terram *Helto Marmiun* Deo & Sancto  
 “ Stephano Cadomi dedit. Ecclesiæ verò *Ab-  
 “ bondonenfi* Decima de Dominio prædicto in  
 “ æuum permansit. Then follows a Charter of  
*Henrie* the first, wherein all the grants of Lands,  
 Churches and Tithes made or thence after to be

made by *Alberique de Ver* and *Beatrix* his wife, their sonne *Alberique* and his brothers, or by their Tenants to the Monasterie of *Colme* in *Essex* (which was a member or as a Cell of *Abbingdon*, and erected by *Alberique* their father) are confirmed; and in them two parts of the Tithe *de omnibus rebus* in the Marmors of *Hetbingham*, *Belcheam*, *Laureham*, *Aldeham*, *Duurecure*, *Bonecleide*, and *Rodiges*, and half of the Tithe of *Walde* and *Wadane*, are recited to haue been conueied to the same Monasterie, *Et dimidia Decima Decimiblanco de Cola, & Tertia pars Decime Ranulfi magni.* this is dated XI. Hen. 1. at *Reding*, that is M. C. XI. And *Faritus* Abbot of *Abingdon* (as it is further remembered) at *Colme* solemnly receiued inuestiture or seisin of euery of those and other possessions so granted by the hand of *Picot Sewer* to *Alberique de Ver*, with the testimonie of his wife, children, and many of his Tenants. And the Patent of *Henrie* the first is there extant, wherein *tota Decima de venatione quæ capta fuerit in Foresta de Windesore*, is granted to the Abbey, which was after confirmed by *Henrie* the second, *Richard* the first and others. In the same Chartularie about the beginning of the same *Henry* the Tithes of *Bulbey* of *Cildesun* are giuen to the Abbey by *William* of *Sulabam*; in *Hanneby* by *Osbern* and *Turolde*; of *Offington* by the Tenants there; of *Wekenfield* by *William* of *Weecenfield*; of *Eton* by *Roger Fuz-*



*Fitz-Alured.* and diuers such are related. and the words of the most obseruable passages touching them shall be here inserted. Anno V. regni *Henrici* Regis intrante (*saies the book*) *Willielmus de Sulabam* dedit Deo & Sanctæ Mariæ & Abbati *Faritio* & Monachis in *Abbendona* Decimam villæ suæ quæ *Bulhea* vocatur. die videlicet Assumptionis eiusdem S. Mariæ. Eodem etiam die confirmauit donum de alia decima quam antea dederat de villa *Cildestuna* quæ ad hæreditatem *Leodselinæ* priuignæ suæ pertinebat, ipsâ puellâ coram Monachis concedente donum. & cum ipso *Willielmo* & cum matre suâ super Altare idem imposuit, coram his testibus; Abbate prædicto & omni conuentu, *Iohanne* fratre coniugis eiusdem *Willielmi*, *Humfrido* eiusdem Milite, *Hugone Conred.* But that of *Tuold* is thus exprest. Similitèr *Tuoldus* de eadem Villa (*that is*, *Hanne*) dedit Deo & Sanctæ Mariæ de *Abbendona* coram *Faritio* Abbate & omni conuentu, in Capitulo, Decimam omnium suarum possessionum, porcellorum scilicet agnorum, vellerum. sed Decimam Caruæ suæ tantummodò ita discreuit, vt duas istius decimationis partes huic loco, tertiam verò partem Presbytero sibi seruienti concederet; hoc idem concedente & confirmante vxore sua *Hugulinâ*, & filio suo *Willielmo.* & hanc donationem donauit anno V. *Henrici* Regis.

Here specially you see as well arbitrarie diuision  
 as consecration of the Tithe by the owners  
 grant. And for the example of the Tithes of  
*Offington*, the words of it are most obseruable  
 “also. Eodem anno (*sayes the Monke that*  
 “*wrote it*) cum venisset Abbas *Faruius* in vil-  
 “lam suam *Offentunam* vt opus Ecclesiæ quod  
 “ibi lapideum à fundamento inchoauerat ad  
 “perfectum determinaret, congregauerunt se  
 “homines sui ex eadem villa & obtulerunt com-  
 “muni deuotione & concessione Decimam suam  
 “totius villæ eiusdem, S. Mariæ & ipsi Abbati  
 “& loco *Abbondonia* ab illo in reliquum tem-  
 “pus. Vt videlicet Abbas de suo proprio Eccle-  
 “siam eiusdem alacrius construendo perficeret  
 “& ipsi mererentur in fraternitate loci annume-  
 “rari. Hanc expetitionem cum Abbas audisset,  
 “inquisiuit vtrum Ecclesiæ eiusdem villæ anti-  
 “quitus Decima ab illis hominibus daretur; no-  
 “lens scilicet eam sua reſtitutione minuere pro  
 “alicuius donatione sibi ſuoque loco oblata. di-  
 “ctumque est, hoc eſſe moris villæ vt a ſingula  
 “virgata Ecclesiæ illi XXIIII. Garbæ pro  
 “Decima numeratæ donarentur. Quod ſciens  
 “Abbas, ſtatuit ante ipſos homines vt, ſicuti ipſi-  
 “met voluerant & optulerant, reciperet eorum  
 “Decimam, ea determinatione assignatâ inter  
 “ipſum Abbatem & Ecclesiâ eiusdem villæ,  
 “ſcilicet, vt tempore colligendarum Decimati-  
 “onum Abbas ipſe mitteret *Offentonam* quem  
 “vellet

"vellet de suis, & ipse reciperet à singulis, secun-  
 "dum singulorum possessionem, rectam Decima-  
 "tionem, & post illam totam collectam, de sin-  
 "gula virgata illius villæ tot manipulos Presby-  
 "tero illius Ecclesiæ tribueret quot superius  
 "diximus ei deberi. reliqua verò Decimationis  
 "Abbati seruaret. Here plainly, no Tithe was  
 parochially paid before this Graunt, but only  
 XXIV. Sheaves of euery Yard Land; which  
 was now diminished also by the consecration of  
 the true Tithe to the Abbey. Then *Willielmus*  
*d. Wecensfeld Dedit suam Decimam ex omni sua*  
*pecunia S. Mariæ & Monachis in Abbendon de*  
*tribus videlicet Hidis in Wecensfeld, & duabus*  
*de Boxore, excepta vna acra quæ Ecclesiæ de Bo-*  
*xore adiacet.* This was in 7. Hen. 2. And in the  
 relation of the Tithes of *Eaton*, granted to the  
 Abbey by *Roger Fitz-Alured*, it is added, *Et*  
*promisit quod cum Osmundo & alijs suis homini-*  
*bus de illa villa faceret vt & ipsi de suo tenore si-*  
*militer Decimam Ecclesiæ huic concederent.* So  
 in 9. Hen. 1. *Aldred & Luured homines Ecclesiæ*  
*de Waliford dederunt Monachis huius Ecclesiæ*  
*Decimas de omnibus videlicet suis pecoribus, &*  
*de agrorum suorum cultura, in capitulo coram toto*  
*contentu.* And in the same yeer, one *Ralfe* gaue  
 them the Tithe of his Farme or Manor of *Bra-*  
*dendene*, and assured them, he would entreat *Ro-*  
*bert de Insula*, his Lord of whom hee held *Bra-*  
*dendene*, *Quatenus illius permissione & concessu*  
suo

*suo hoc confirmaret, vt hac Ecclesia ipsius Decime donatione firmitus in posterum potiretur.* The like gift occurs there, made by *Hugh Fitz-Wichtgar* in 10. *Hen. I.* of the Tithes of *Bennabam*. And about the same time, *Gilbert Basset* gaue for euer to the Abbey, with his sonne *Robert* entering there into Religion, the Tithe of his Land in *Waneting*, to be employed *ad vsum pauperum*. Not long after, *Hugo Dispensator Regis* (it seems, Treasurer of the Household) granted to the Abbey, *Suam Decimationem de omni pecunia tam de mobilibus rebus quam immobilibus de Manerio Spesholt quod de Ecclesia tenebat, sua coniuge Helewisa fauente, coram his testibus; Poidras suo homine, & Anschitillo suo prapposito de predicta villa, & multis alijs.* The like did *Ralfe* the Abbots Chamberlain grant out of two Hides in *Steringsford*. So one *Iocelin* and his sonne *Randoll* granted to the Abbey two parts of all kind of Tithes *in possessione quadam quæ Graua dicitur.* And one *Norman*, when his sonne *Eudo* there took habit of Religion, consecrated with him *Decimam Dominij sui de Winterburne, quam cui placeret Ecclesie liberè donare poterat. quæ sic concessa sub manus sacriste redacta est.* And among other possessions of the Abbot and Couent, confirmed by the Bull of Pope *Eugenius* the third, in the yeere M. C. LII. (that is, in XVII. of King *Stephen*) these Tithes granted, are particularly reckoned in it, as part of what they

they did in *presentiarum iuste & canonice possidere*. so are the words of the Bull. Neither to other purpose are the words of the Bishops of *Salisbury*, Ordinaries of the Diocese, in their generall confirmations of Churches and Tithes to the Abbey. These confirmations of theirs came diuers.years after the Grants made by the owners, and are at large extant in the Chartularies of the Monasterie. The first that made any, was *Hubert*, who was consecrated Bishop in 1. *Rich. 1.* that is, M. C. LXXXIX. In the time of *Henry* the second, through the procurement of *Richard* Sacristein of the Abbey, one *Giralin de Curzun* graunted to the Abbey, *Decimam XXX. acrarum de Westlakinge, quam parentes sui prius concesserant & ipse Altari sancte Mariæ concessit, addens de Porcellis sue Agnellis aut Caseis aut rebus alijs quæ Decimari solent, Decimam, quam priores sui minimè dederant. Hanc verò donationem super Altare S. Mariæ deuotus obtulit; trium tantum acrarum Decimam de XXX. Ecclesie de Waneting reservatâ.* Then, for Tithes in *Chiltune*; it is there reported, that in 2. *Hen. 2.* *Nicholas Fitz-Turolde* gaue them to that Monasterie. his whole Charter is recorded, and so take it here for that part transcribed. *Notum sit presentibus & futuris testimonio huius scripti sigillo meo signati, quod ego Nicholaus filius Turolde de Estuna pro salute animæ meæ parentumque meorum, & pro eo quod licitum mihi esset*

ab Ecclesia de Abbendona cœmeterium habere cappellæ meæ de Winterburna, concessi firmiter & finaliter dedi prædictæ Ecclesiæ Abbendonensi singulis annis imperpetuum habendas Decimas terre meæ quam in Dominio meo teneo in villa Chiltune. In bladofcilicet ad ostium Grangie meæ suscipiendo & in Caseis & in Velleribus & Agnis & Porcellis, & in omnibus quæ Decimari solent. And at the time of the Grant, it was by the Abbot Ingulph assigned to the use of the poor and strangers, that is, to the Almosnerie, as indeed most other of their consecrated Tithes were: Which is yet to bee seen in the accompts of the reuenues of euery Office of the house.

\* In Biblioth.  
Cotton.

*Out of the \* Chartularie of the  
Abbey of Osney.*

The Abbey being founded in 29. Hen. 1. that is, in M. C. XXIIX. by Robert d' Oily High Constable of England; in the Charter of the Foundation are giuen to it the Tithes of the Founders Mills, that were neere the Castle of Oxford, & Decimatio Nicholai de Stodeham quam Fromundus (a Chaplain mentiond in the Charter) tenebat. and that is iterated often in other Charters to the same Monasterie. And after in the same Chartularie is a Catalogue of diuers Portions of Tithes belonging to the Abbey, and as issuing out of the Demesnes of such as had encreased the reuenues of it with endowments.

of

of Tithes newly granted. nor are they exprest with any reference to this or that Parish, but only to the Demesnes and names of the Donors. And then comes a confirmation of *Richard Bishop of Lincolne* (within that Diocese, *Oxfordshire* was, till the later institution of a Bishopricque in *Oxford*) wherein, among the ancient possessions of the Abbey, enioyed through their hauing *Saint Georges Church* in the Castle by *d'Oile's* gift, two parts of the Tithes of all things *que Decimari solent, in dominico borum Maneriorum, videlicet, Bercencestre, Erdinton, &c.* are confirmed to it. Neither is the number of those Mannors there named, vnder fortie. Which way is it likely, that the Church of *S. George* came to two parts of the Tithes of so many Mannors, if not by consecration of the owners? And indeed afterward is a transcript of a Charter of *Robert d'Oily's* (that was aboue C. XX. yeeres before the Bishops confirmation) to the Abbey, wherein he giues three Hides in *Walton* and *Terram de Twenti* acre & *Decimam earundem terrarum, & pratum quod vocatur Brunmannes Mead, cum Decima eiusdem prati* (where note, the Land and the Tithe of the same Land is giuen, which could be but a discharge of Tithes in the Abbey) & *cum Decima de Northam, Wiueleya, & Lincha, & omnium terrarum & pratorum & aliarum rerum Decimabilium que sunt inter Castellum Oxoniæ, & \* Heuntefeyam aut Botleiam scilicet in* \* Hincley.



*Comitatu Oxoniæ.* And then *Duas partes Decimæ, de omni re quæ Decimari solent, de omnibus dominiciis viriusque honoris qui adiacent Castello Oxenefordie; videlicet de Hokenorton, Swerefordia, Bereford, Wiginton, &c.* with a recital of about fortie Townes and Mannors, which are also in that confirmation long after made by the Bishop. In the same Booke, *Richard of Dodeford* giues them in perpetuall right the Tithes *de assarto bosci mei de Hecholthe cum assartatus & excultus fuerit, siue ego siue alius per me illum assartauerit & excoluerit.* This seemes to be of about King *Iohns* time. And one *Hugh de Crofies* grants them *Decimas domini mei de Wauretun de omnibus rebus quæ Decimari possunt & debent, tenendas de Priore & Monachis de Tedford in perpetuum, sicut cartæ utriusque Monasterij inter eos factæ testantur.* And this was in 3. *Rich. 1.* And a pension was yeerely payable for them to the Prior of *Thetford* by that clause of *tenendas*, as appears in the confirmation made of the same Charter by *William* Bishop of *Hereford*. You must know, that the ancestors of *Croftes* had formerly giuen those Tithes to the Priorie of *Thetford*, as is remembred there also.

\* In Biblioth.  
Caston.

*Out of the Chartularie or \* Lieger-Booke of the Priorie of Gisburne or Gisburgh in the North-riding of Yorkshire.*

In a Fine there of 23. *Hen. 3.* between *Peter* of *Bru*

*Brus* demandant, and *Iohn* Prior of *Gisburne* tenant, it appears, that when *Robert de Brus*, ancestor of *Peter*, vnder King *Stephen*, founded the Monasterie; he by grant endowd it, among other possessions, with the Tithe of his demesnes of *Libun*. And in another of 26. *Hen. 3.* the Concord hath these words in it, *Et similiter idem Petrus concessit pro se & heredibus suis, quod idem Prior & successores sui habeant in Parochijs suis Decimam venationis sue & heredum suorum; & scenorum suorum ubicunque scenum falcabitur præterquam in locis subscriptis, scilicet in Parco sub Castro de Daneby & in IV. Laundis in Foresta de Daneby, scilicet in Launda de Souresby, Eskebriggethwoyt, Karlethwoyt, & in Launda sub Threlkeld, & in Haya de Skelton clausa ex aquilonali parte de Routheline, & in paruo Parco circa Castrum de Skelton in quibus locis nullas Decimas sceni habebunt.* That of the Tithe of *Venison*, taken within the Parishes of the Priorie, was confirmed in another Fine of 30. *Hen. 3.* leuied before the Iustices of *Eire* in *Torkeſhire*; and therein also was further added, *Concessit etiam idem Petrus pro se & heredibus suis, quod ipsi de cætero reddent singulis annis prædicto Priori & successoribus suis & Ecclesie sue prædictæ Decimas Molendinorum suorum in Parochijs suis existentium imperpetuum.* So that if the Mills were in Lease, the Tenth of the rent was payable; if in the hands of the grantor, or his heires, the

Tenth of the multure. and for true payment, the Millers were, by the concord of this Fine, bound to doe fealtie to the Prior and his successors. But I haue not seen an example of such disposition of Tithes of so late time. few or none else (I thinke) exceed the yeer of that Constitution of *Lateran* before spoken of: and remember that this is of *York* Prouince, in which perhaps the Decretall sent to *Canterburie* had not such effect till somwhat after, as is before touched.

\* In sepia dist.  
Bibliotheca.

Out of the Chartularie \* of the Monasterie  
of *S. Andrews* of *Rocheſter*.

Henric the first giues to the Monks there di-  
uers Churches with Tithes, Et dimidiam  
Decimam meam de *Tarentford* in annona  
tantum, & totam Decimam meam de *Strodes*,  
& totam decimam meam de *Chealches*, & hoc  
facio pro anima Patris mei & Matris meæ &  
pro anima mea & vxoris meæ, *T. Eudone* da-  
pifero & *Haymone* dapifero apud *Roueceſtri-*  
*am*. Other Tithes of whole Mannors he gaue  
also to them, Et decimam \* *Balenarum* quæ  
captæ fuerint in Episcopatu *Roffensi*. And a-  
bout the same time *Ralf Archbishop* of *Canterbu-*  
*rie* by Charter gaue them Totam Decimam de  
meo *Dominico* & omnes Decimas omniū vil-  
lanorum qui habent terram in *Dune*, necnon  
& aliorum omnium, quorum decimæ meo  
tempore acquisitæ sunt vel quocunq; tempo-  
re

\* Hen. cap. 2.  
Regis sunt. Pro-  
regis. Reg. cap. 11.  
&c.

“ re adquirentur. Many other Charters are in it  
 “ to like purpose, as : Ego Willielmus de Albino  
 “ Pincerna Regis concedo Deo & Sancto An-  
 “ dreæ de Roucestria & Monachis eiusdem loci  
 “ totam meam Decimam de villa mea que voca-  
 “ tur *Elbam* in omnibus rebus scilicet de blado  
 “ & de pasnagio, & de molendinis, & de pecu-  
 “ dibus, & de lana, & de caseis &c. & medietatē  
 “ Decimæ de *Bilintune* in omni rebus  
 “ pro anima Domini mei *Willielmi* Regis &  
 “ *Henrici* Regis atque pro anima mea & patris  
 “ mei & matris meæ & uxoris meæ & fratris mei  
 “ *Nigelli*, & nepotis mei *Humfridi* & aliorum  
 “ parentum meorum viuorum atque mortuo-  
 “ rum. Testibus militibus meis, *Nigello* de *Wast*  
 “ &c. That d’*Aubigny* was Earle of *Chichester* or  
 “ *Sussex* or *Arundel* (for all these titles he vsed)  
 and diuers Confirmations were afterward by his  
 Successors, of this Grant. and *K. Henrie* the first  
 also confirmed this of the first *William*. and the  
 Prior and Couent not long after made a Lease  
 of that their Tithe in *Bilintune* to one *Gilebert*  
*de Perieres* for IX. yeers, reseruing half a Mark  
 rent payable at Easter. and this was confirmed  
 by the Archbishop of *Canterburie*.

Roger Bigot Earle of *Norfolk* vnder *Richard*  
 the first, and *William* his yonger sonne, had giuen  
 diuers reuenues to the Priorie, and among them  
 occur the Church of *Waltune*, and then by it  
 selfe tota Decima villæ *Waltune* de omni re &c. to-

ta Decima molendinorum ad eandem villam pertinentium. this is related in the confirmation of *Hugh Bigot* Earle of *Norfolk* and sonne to *Roger*. and some other Churches. were granted, but no Tithes mentioned with them. and afterward the first Charter of *Rogers* grant is in the same Volume at large. The Tithes of *Buggeley* were giuen to the Priorie by the Ancestors of *Osbert de Cappaualle*, and charged with three shillings yeerly rent, paiaible to the Monks of *Colchester*. this instrument there remaining shews  
 “ it. Notum sit omnibus (as the words are.)  
 “ quod ego *Osbertus de Cappaualle* & *Adeliza*  
 “ vxor mea, & *Humfridus* priuignus meus &  
 “ hæres patris sui, accepta societate *Roffensium*  
 “ Monachorum pro amore Dei & Sancti *Andree*, & salute animæ nostræ, & omnium parentum nostrorum, concessimus eis omnem  
 “ Decimam de *Bugeleia*, sicut eam antecessores  
 “ nostri in eleēmosynam dederunt, firmiter &  
 “ stabiliter, & quietè perpetuò tenendam, reddituris inde annuatim Monachis de *Colecestre*  
 “ tres solidos quamdiū eandem tenent & habere  
 “ poterunt. & hanc concessionem nostram præ  
 “ senti sigillo confirmauimus &c. this was afterward confirmd by *Philip* of *Leiburn* and his wife *Anne*, and *Robert* of *Leiburn* Tenants of *Buggeley*.

The Tithe of *Gedding* was thus granted by the Ancestors of *Payn Shrise* of *Surrey*. Notum sit  
 om-

omnibus presentibus atq; futuris quod ego Pagan' Vicecomes Surregiæ, do & concedo Decimam de Geddinges quam antecessores mei dederunt Deo & Ecclesie S. Andrea de Roucestria pro anima patris mei & matris meæ, & pro me & uxore mea. & mihi concessum est ab eadem Ecclesia quod post obitum nostrum singulis annis anniuersarium mei & uxoris meæ in perpetuum persoluetur.

The Tithe of Stalefield is granted to the Monks by D. de Monei, and sic tenendam sicut tenuerunt de antecessoribus meis.

In 8. Hen. 1. half the Tithe of Halegele was giuen to them by Henric de Port, the other halfe  
 " being before conueid to them---Decimam totam de Halegele, de qua (so speaks the Charter)  
 " prædictus Sanctus (that is S. Andrew) dimidiam partem habuerat, ceteram verò pro amore Radulphi Episcopi, ut prædictum est, supra  
 " taxato tempore donauit. these others also follow.  
 " Walcelinus Maminot omnibus Sanctæ Matris Ecclesiæ filijs tam posteris quam presentibus salutem. Notum vobis facio quod  
 " Decimam de Dominio de Bertreia quam pater meus pro salute animæ suæ & suorum Ecclesiæ Rossensi & Monachis ibidem Deo seruientibus in perpetuam eleēmosynam dedit,  
 " me similiter pro redemptione delictorum meorum & uxoris meæ, & heredum meorum concessisse & præsentī scripto confirmasse. Quod si  
 " aliquid de prædicto Dominio in Rusticanam

“seruitutem translatum est vel fuerit, decima  
 “tamen secundum primam donationem integra  
 “permaneant. Teste *Rodberto de Binham* Pres-  
 “bytero &c.

“Omnibus Christi fidelibus ad quos præsens  
 “scriptum peruenerit, *Willielmus de Lamualai*  
 “æternam in Domino salutem. Nouerit vni-  
 “uersitas vestra quod ego *Willielmus de Lamua-*  
 “*lai* diuinæ pietatis intuitu pro salute animæ  
 “meæ & vxoris meæ, & liberorum meorum, &  
 “antecessorum meorum & successorum, conce-  
 “si & hac præsentī Carta mea confirmaui Deo  
 “& Ecclesiæ S. Andreae & Monachis Roffensi-  
 “bus in puram & perpetuam eleemosynam, me-  
 “dictatem totius Decimæ de Dominio meo de  
 “*Henberst* quam antecessores mei eis dederunt  
 “& concesserunt; tenendam & habendam bene  
 “& in pace liberè & quietè de me, & successo-  
 “ribus meis, & per manus eleemosynarij eorum  
 “in vsus pauperum distribuendam: ideoque vo-  
 “lo & firmiter præcipio vt prædicti Monachi  
 “habeant &c.

“Omnibus sanctæ Matris Ecclesiæ filijs ad  
 “quos præsens scriptum peruenerit, *Adam*  
 “*Pincerna* æternam in Domino salutem. No-  
 “uerit vniuersitas vestra, quod ego *Adam Pin-*  
 “*cerna* cognitâ & compertâ dilectione quam  
 “antecessores mei habuerunt erga Ecclesiam S.  
 “Andreae Roffensis & Monachos in eadem Ec-  
 “clesia Deo seruientes, Decimam de Dominico  
 “Campo



" Campo meo in *Culinges* qui vocatur *Wesbroc*  
 " quam *Radulfus Pincerna* eis dedit intuitu Dei,  
 " prædicti Ecclesiæ, & S. Andree, præfatis Mo-  
 " nachis in puram & perpetuam eleëmofynam  
 " concessi & præfenti Carta mea confirmaui, ita  
 " videlicet quod *Richardus* frater meus qui suc-  
 " cessit *Geruatio* Decano in personatu Ecclesiæ  
 " de *Culinges* ad præsentationem meam & suc-  
 " cessores sui reddent annuatim, nomine De-  
 " cimæ illius, præfatis Monachis dimidiam  
 " marcam argenti in crastino festiuitatis Sancti  
 " Andree omni occasione remota & dilatione  
 &c. it seems that the Parson of *Culinges* by the  
 Patrons will herein declared, was to haue the  
 Tithe of *Wesbroke* in kind, and pay half a mark  
 for it yeerly to the Priorie.

" Sciant tam præfentes quam futuri quod e-  
 " go *Henricus de Malemeins* concedo & confir-  
 " mo Monachis Ecclesiæ sancti Andree Apo-  
 " stoli *Roucestriæ* Decimam meam totam de  
 " Dominico meo & eam vehendam quocunq;  
 " voluerint & transferendam; cum ante hanc  
 " concessionem solummodo granum habuerint.  
 " Prætereà dono eis & concedo Decimam me-  
 " am de vitulis & porcellis. Has concessiones  
 " confirmo illis pro amore Dei & salute animæ  
 " meæ & vxoris, & antecessorum meorum libe-  
 " rè & quietè possidendas assensu hæredis mei  
 " & voluntate vxoris & amicorum meorum.  
 " Teste &c.

And *William Hachet* confirms the moitie of the Tithes of his demesnes in *Hainwold* (which his ancestors had granted to the Priorie) to hold free *sine omni molestia & exactione*. and warrants them *contra omnes homines sicut liberam eleemosynam nostram*.

A like confirmation is from *William of Srambroche* of the Tithe of *Srambroche*, granted formerly from his Ancestors to the Priorie.

*William of Gurnay* had giuen to the Priorie certain Tithes in *Edintune*, which lying dispersed, were not so commodious for the receipt of the Monks as of the Parson of the Parish. thereupon *Galiena*, grand-child to *William*, declares, that for that cause *prouisum est & statutum*, *ut quilibet illius Ecclesie persona nomine Decimarum illarum liberaliter soluent annuatim prædictis Monachis Rouecestræ quinque solidos, ad festum beati Andrea*. and so confirms both the gift of her Ancestor and this composition between the Parson of *Edintune* and the Prior and Cōuent.

*Haimo filius Guidonis de Dudindale*, confirms, in *puram & perpetuam eleemosynam*, the gift made by his ancestors *Gerold* his grand-father, and *Guy* his father, of all the Tithes of his land in *Dudindale*. which was afterward confirmed also by his sonne and heire *Iohn*.

*Hamelinus de Columbeirs* establishes the perpetuall right of all the small Tithes of his Demesnes, in the Chantor of the Priorie, to whom  
by

by ancient possession of his Predecessors, hee found they belonged, when controuersie was about them, twixt the Chantor and *Ralf Parson of Frenesburie*.

*William* the sonne of *Thomas* of *Tsfield* and all his coparceners, confirme the Tithes of *Tsfield* formerly giuen by their Ancestors in *puram & perpetuam eleemosynam*. and further grant all small Tithes of *Tsfield*, as of Lamb, Calt, Piggs, Fleece, and the like. *Et vt hæc nostra donatio* (saies the Deed) *& confirmatio inconcussa permanent, ego Willielmus omnium fratrum meorum voluntate pro omnib' sigilli mei appositione corrobore*. which I note for the speciall kind of sealing with the eldest brothers seale only.

*Henrie* of *Tuang* confirms to them *Decimam de Tuange quam præfati Monachi habent de dono Smalemanni aui mei tam in Tuange, quam in Rundel*.

These Grants or arbitrarie Consecrations were all diuers yeers before the end of M. C C. after Christ, and for the most part in the times of *Henrie* the first, *King Stephen*, *Henrie* the second, and *Richard* the first. neither need you make doubt of the allowance of them by the Clergie of that time. The Tithes so arbitrarily giuen by Lay men were not only possessed by the Priorie, but were also afterward, with others which are not mentiond in the Chartularie, solemnly confirmed to them by the Archbishops

of *Canterburie* with their Prior and Couent, who supplied that which now is the Deane and Chapter. for in 23. *Hen. 2.* vpon a controuersie arising about some Tithes challenged by the Priorie, a confirmation was giuen by *Richard* Archbishop of *Canterbury*, in which he grounds their right vpon the Deeds of the Grantors. *Cognito* (are his words) *iure prædictorum Monachorum per inspectionem instrumentorum suorum, considerata etiam diuturna illorum possessione &c.* and then he confirms to them all the Tithes granted to them within his Diocese, and reckons by name seuerall Tithes in VIII. Parishes, most of which occur in those examples; After which he confirms also their appropriated Churches with Tithes belonging to them. For Tithes giuen with the Churches appropriated they had as belonging to those Churches. but others seuerally consecrated were no otherwise in them then as if Rents or other profits had been granted out of lands to them. A like confirmation was made by *Baldwin* in 1. *Rich. 1.* of all Tithes in particular that were formerly settled in them by Lay mens grants. And another such was by *Hubert* Archbishop in 1. of King *Iohn*, wherein he confirms to them *omnes Decimas à quibuscunque Dei fidelibus vsque in præsens in Archiepiscopatu nostro illis collatas.*

[Out of the Chartularie of the Monasterie of  
 \* Reding for Leonminster or Lemster in  
 Herefordshire, that was annext by  
 Henry the first to Reding, in  
 the foundation.

\* In iam memora-  
 ta Bibliotheca.

Walter Clifford, for the health of his fathers  
 soule, and for his wife and children, giues *Eccle-  
 siæ de Leonminstre Decimam de tota Hamenesca  
 tam de dominio quàm de villanis s. de omnibus  
 vnde Decimæ dantur tam de viuis quam de mor-  
 tuis*. But the Church of *Lemster* is called there  
 the Mother-Church of the place. This was about  
 King *Iohns* time. And *Robert Malherbe* giues to  
 the same Church *Decimam de toto dominio meo  
 de Rifeburie de omnibus, vnde Decimæ dantur tam  
 de viuis quam de mortuis*.

Out of the Chartularie of the Nun-  
 nerie of \* Clerkenwell.

\* *Idem*.

Among many possessions confirmed to it by  
 " *Henrie* the second, we find, *Ex dono Gaufridi*  
 " *Comitis de Essex & Eustaciæ* vxoris eius to-  
 " tam *Decimam* totius victus & procurationis  
 " illorum & domus suæ & familiæ suæ; and, *Ex*  
 " concessione *Alexandri* Prioris & Monacho-  
 " rum *Ecclesiæ Sanctæ Mariæ Magdalenæ de*  
 " *Stanesgate*, assensu conuentus *Ecclesiæ Sancti*  
 " *Pancratij de Lewes*, omnes *Decimationes* illa-  
 " rum

“rum de p̄scodo de *Clerkenwell* cum pertinen-  
 “tijs suis.

And *Maurice* of *Totbam* and *Muriel* his wife  
 “grant to the Nunnerie, Ius parochiale in per-  
 “petuo habendum in terris nostris quas habemus  
 “& tenemus de Episcopo *Londinensi* iuxta  
 “*Londoniam*, & in hominibus in eisdem terris  
 “existentibus & in certis terris nostris quæ ad  
 “Parochiam pertinent. And further, that those  
 Lands and his Tenants should be ioind *Iure Pa-*  
 “*chiali* to the Church of the Nunnerie, Et  
 “quod homines illi reddant & faciant quæ Pa-  
 “rochiani debent reddere & facere suæ Matri  
 “Ecclesiæ. And that the Nunnes should qui-  
 etly enioy all Tithes of those Lands, according  
 to the intent of the Grant from the Priorie of  
*Lewes* in *Suffex*; which also is rememberd else-  
 where in the same Chartularie.

*Maude* of *Mandewill*, Countesse of *Essex* and  
 “*Hereford* grants, Totam Decimam totius vi-  
 “ctus nostri & familiæ nostræ vbicunque fueri-  
 “mus de panibus & potibus & carnibus & eti-  
 “am de Piscibus sicut in Carta Domini *G. de*  
 “*Mandewilla* Comitis *Essexiæ* antecessoris no-  
 “stri continetur. And a great Curse is added  
 to all such as should disturbe or preuent the  
 Nunnes in their enioying of that Tithe. The  
 reference made is to that which is before menti-  
 oned in the Patent of Confirmation, made by  
*Henrie* the second. This of *Maude* was about  
 the

the beginning of *Henrie* the third, and is but a confirmation of that of *Geffrey of Mandeuill*, made Earle of *Essex* by *Maude* the Empreſſe.

*Out of the liues \* of the Abbots of S. Auguſtines of Canterburie, written by Thomas Sprot \*, a Monk of the Abbey vnder Edward the firſt.*

\* In *Bibliotheca Cotton.*

\* *Salzo Thomas Sprot dictus eſt.*

“ Eodem anno Domini (videlicet M.L X X.)  
“ in villa de *Fordwico*, *Willielmus* Rex contulit  
“ Sancto *Auguſtino* & fratribus eiufdem coeno-  
“ bij, Eccleſias de *Fauersham* & de *Middeltune*,  
“ & Decimas de omnibus redditibus proueni-  
“ entibus ex illis duobus Manerijs S. de *Mid-*  
“ *deltune* & *Fauersham* & Decimam de omni-  
“ bus appendentibus, Terra, Syluis, Pratis, &  
“ Aqua, excepta Decima Mellis & Gabuli dena-  
“ riorum. Et ſunt iſtius donationis ſeptem Car-  
“ tæ diuerſorum Regum præter iſtam. That  
“ *Gabulus denariorum* is rent paid in money. *Scot-*  
“ *land* was then Abbot there.

In the ſame Abbots time, *Odo* Biſhop of *Bay-*  
“ *eux*, and Earle of *Kent*, gaue to the Abbey,  
“ Decimas aliquas quas mei fideles habebant,  
“ id eſt, *Athelwoldus* de tribus villis quæ dicun-  
“ tur *Knolton*, *Tiſkenberſt*, *Ringelton*, & Deci-  
“ mam totius terræ *Turſini*, necnon Decimam  
“ *Osberni* filij *Letardi* de duobus locis, id eſt,  
“ *Bedleſangre*. Decimam etiam *Osberni* Pay-  
“ *fori* de villula quæ dicitur *Bochland*. Hæc



“ omnia (as the words of his Charter are ) dono  
 “ concedo & confirmo &c. Si quis verò huic  
 “ donationi contrarius fuerit, vel aliquam ca-  
 “ lumniam ingesserit, æterno anathemate ipso  
 “ factò sit reus & Regiæ Maiestatis &c. Then  
 the Autor tells vs, that afterward *William d' Au-*  
*bigny* wrongfully took the Tithe of *Knolton* and  
*Ringelton* from the Abbey, as *Roger of Memires*  
 did the Tithe of *Bochland*.

In the yeer M. LXXIX. *Scotland* being still  
 Abbot, *Herebert Fitz-Iuo* gaue to the Abbey,  
 “ Decimas quinque Mansionum suarum vel cen-  
 “ tum solidos nummorum quod in arbitrio Ab-  
 “ batis & fratrum S. Augustini constituit vtrum  
 “ Decimas ipsas vel centum solidos pro Deci-  
 “ mis acceptarent. Those siue *Mansiones*, or  
 Farmes, or Mannors, were *Oliue*, *Ewelle*, *Of-*  
*prenge*, *Heregedsbam*, and *Langedone*. But this  
 Tithe was afterward ( *lāyes Sprot* ) wrongfully  
 detained from them by *William Peuerell*.

About the same time, Abbot *Scotland* made  
 a Lease of V. *Solings* (that is, *Solins*, or *Selions*,  
 which are made the same with Hides, or Plough-  
 lands, by some \* good autoritie) about *North-*  
*bourne* to one *Wadard* for life, reseruing rent of  
 XXX. shillings, and the Tithes, of all profits  
 there accruing, to himselfe.

The same Abbot leased for life to *Amfrid*  
*Mauclerc* his Land of *Riple*, and of *Aluctune*,  
 vpon like condition, that *Mauclerc* should pay  
 to

\* Regist. Mona-  
 sterij S. Martini  
 de Bello in Archi-  
 uo Regij quæ ad  
 Forum à Regio-  
 rum prouentuum  
 incremento di-  
 ctum spectant.

to the Abbey all the Tithes both of those Lands as also of his V. Mannors, *Hortun, Legu, Ernolton, Seeldrisbam*, and *Ostacestone*, and also all other Tithes of his yeerely encrease whatsoeuer.

“Decimam etiam tam frugum quàm omnium animalium suorum & cæterarum rerum.

One *Hugh Fitz-Fulbert* had a Lease for life of the same Abbot, of two Solings of Land in *Siberteweld*, whereupon rent of XX. shillings yeerly was reserued, and this Condition also annexed, Vt daret etiam Decimam omnium rerum suarum quas ipse in dominio haberet.

When *Hugh* of *Trottesclive*, Abbot there, founded his Hospitall of *S. Laurence*, among other Endowments, hee gaue it, Totam Decimam totius annonæ de dominio de *Langeport*. This was vnder King *Stephen*.

And *Anno Domini M. C. LXXXVIII. Rogerus* Abbas tradidit Priorissæ de *Scapeia* Decimas de *Westland* intra Parochiam prædictæ Priorissæ pro quatuordecim solidis annuatim reddendis sacristæ *S. Augustini*. What Tithes were intra *Parochiam* of the Prioresse of *Shepey*, were by former Grant of the owner conueyed to the Abbey.

*Out of Peeter of Blois his \* continuance of the Historie of the Abbey of Crowland in Lincolnshire.*

\* In suprà dict. Biblioth.

At the foundation of the Church, new built  
S f 2 by

by Abbot *Ioffrid*, in the time of *Henrie* the first, a great meeting was of the deuouter sort of *Torkefbire* men specially, and others, to the number of aboue fiue thousand in all. and most of them laid stones at it, and vpon the stones, some offered Money, some the Patronages of Churches granted by Charters, others Tithes of their Lands : as for example, the words are, Iuxta  
 “ illum proximum lapidem versus *Boream* po-  
 “ suit *Simon* Miles & vxor eius *Gulana* offeren-  
 “ tes Ecclesiæ Decimam de *Morton*, & de *Schap-*  
 “ *wik*; & iuxta illos proximum lapidem versus  
 “ *Boream* posuit *Reinerus* de *Batbe* Miles & vxor  
 “ eius *Goda* offerentes operi Decimam de *Hou-*  
 “ *tona* & de *Birtona*.

¶ *Idem.*

*Out of the \* Lieger-Booke of the Abbey of  
 S. Albons in Hertfordshire.*

The Abbot and Couent, about 20. of *Henrie* the third, gaue to the Church of the holy *Trinitie de Bosco*, and the Nunnes there, for euer, *Totam Decimam de dominio nostro de Caysho in omnibus rebus de quibus Decimæ dari solent*, and two parts of the Tithe Corne of the Parish of *Watford*, and some other moities of Tithes, the rest being in the Parson of *Watford*. But that of the demesnes of *Caysho* was newly now created, and expressed for the prouision of apparrell for the Nunnes. But this being so long after the Constitution of *Lateran*, and being made only out  
 of

of their demefnes which perhaps they had discharged, doth only giue an example among many, of another originall way of creation of tithes in some Monasteries, but not so much adde to or confirm the arbitrarie course of disposition of them by Lay men in times before that so frequently vsed.

“ Henricus Rex Angliæ R. Episcopo Dunelmensi & omnibus Baronibus suis salutem, sciatis me (*it is Henrie the first*) dedisse Deo & S. Mariæ, & S. Oswino, & Abbati de S. Albano, & Monachis de *Tinemuth* omnes Decimas suas per *Northumberland* quas Robertus Comes (*that is Robert of Mowbray Earle of Northumberland, who in time of William the second founded the Priorie of Tinemuth*) & homines eius donauerant eis, scilicet \* Decimas de *Colebrige*, & illas de *Quinton*, & de *Wylun*, illas etiam de *Neuburn*, & illam de *Discington* & de *Caluerdon*, & de *Elstwic*, & illas etiam de *Bosball*, & de *Werkwritb*, & de *Anebell*, similiter & de *Roubrye*, & de *Wulloure*, & volo ac præcipio quatenus supradictus Abbas & Monachi de *Tinemuda*, benè & integrè habeant illas ac liberè teneant in mea pace, & quod nullus eis inde aliquid auferat super meam forisfacturam. *T. Nigello de Alben.* apud Brantonam.

By the same King. H. Rex Angliæ *Ranulpho* Episcopo Dunelmensi, & *Alfrico* & *Lulio*

\* Videlicet Cart.  
Antiq. B. B. 14.  
et 15. etc. in arch.  
Lond. et G. 22. in  
Dursa.

Vicecomitibus salutem. Sciatis me concessisse & dedisse Deo, & Sancte Mariæ, & S. Oswino, & Abbati de S. Albano Decimas quas *Hubertus de Lauall* ante dederat Monachis de *Tinemuda*, scilicet de *Setona* & *Caluerdona*, & de *Discingtona*, & volo ac precipio vt benè & integre in mea pace teneant eas, & quod nullus super eis iniuriam faciat. *T. Nigello* de *Alben*. apud *Wintoniam*. This was either a confirmation of a consecration made by *De Lauall*, or els a gift of Tithes out of the same lands, by the King, after some escheat or other new title acerued to the Crown. The Church or Priorie of *Tinemuth* was giuen to the Abbey of *S. Albons* by *William* the second, after *Robert de Mowbray* had forfeited the Patronage, among the rest of his estate, by treason.

*Henric* the second confirms to the Monks of *Tinemuth* all their Churches appropriated, and Decimas de *Corebriga*, & *Newburna*, & de *Wertewrtha*, & de *Rodbiria*, & de *Botala* & *Wlonera*, & de *Wylum* & *Ditentona*, & de *Calterduna*, & de *Alswicha*, & de *Anibella*, & Decimas de *Dominio* de *Herth*, & de *Setona*, & de *Tunestal*, & de *Daltona*, & de *Mideltona*, & de *Ouinthuna*. All which were, without Churches, formerly and in perpetuall right consecrated by the owners deuotions. the like often occurs in confirmations made to them by the succeeding Kings.

In 7. Rich. 1. Hugh of Pudsey Bishop of Durham, confirms to the Monks of Tinemuth, Omnes Decimas & obventiones tam in blado quam in alijs decimationibus tam de dominijs Regis quam Baronum, siue aliorum fidelium & propriarum villarum, & dominiorum tam in Northumbria quam in Halmarcsfalk (that is in the Territorie of the Bishopricke of Durham) ita plenarie & libere possidendas, sicut eas plenius & melius habuerunt vel habere debuerunt, tempore nostro vel antecessorum nostrorum; & sicut donatorum Cartae testantur. And some other Churches of such generall ratification they haue from the Archbishop of York.

In the instrument of foundation of the Cell of Belveir, made between Abbot Paul and Robert of Bekpedeir or Belveir, or de pulchro visu, that Robert grants it the Tithes of all Lands that he should hereafter purchase. *Omnium terrarum quasunque per Dei adiutorium & concessum Regis in suum dominium adquirere, quoquo modo possidet, dedit & concessit Decimas eidem Ecclesiae sanctae Mariae*; that is to the Cell, which was at first purposed for a Parish Church, but by aduice of Archbishop Lanfrank was couerted into a Cell. *Dedit etiam & concessit Decimas Vinearum suarum omnium & sedem molendini in proxima aqua, & concessit Decimas decem villarum ad praesens, ex suo videlicet dominio annonae, omniumque rerum* de

*de quibus Decima danda est & datur, semota quidem tertia parte Presbyteri villæ.* The names of the Mannors or Towns of which he thus gaue two parts of the Tithes, are, *Horton, Fraton, Saper-ton, Rishendon, Stocbes, Wiberteson, Segeton, Medburne, Wivell, and Wlstanestorp.*

*Robert of Piriton* gaue to the Abbey, the Church of *Saint Marie* that he had built in *Piriton*; and endowd it with gift of all the Tithe, *eiusdem villæ sui dominij & omnium suorum hominum ibi manentium omnium illarum rerum de quibus recte Decima datur;* And in *Nicenton* he gaue all the Tithe of his demesnes only. In *Cauendeis & Hocaton & Aperston, Decimam dominij sui, excepta cantaria.*

*Ralf of Limesi* gaue to the Church of *Saint Marie* also that he built in *Piriton, Decimam suam in eadem villa &c. & Decimas hominum eiusdem villæ ipsis libenter concedentibus.* *Apud Nicentonam dedit duas partes Decimæ suæ &c. apud Hulferlea dedit similiter duas partes Decimæ suæ & apud Eprestunam similiter & apud Cauendeis & Hocktentunam.* And these endowments are there called *beneficium Ecclesiæ.* These and other Tithes so seuerally granted are confirmed to the Abbey by *Alan de Limsey, Gerard de Limsey* and others of the posteritie of *Ralf.* The Tithe of the Agistment of *Bibesworth-wood,* also was granted by *Ralf,* and of other Agistments, with prouision also that if the woods were assar-  
ted



ted or improned by culture, the Abbey should haue Tithe in kind of the improuements. The whole Deeds of conueiance are there at large. and a Bull of confirmation was long afterward obtaind from Pope *Alexander* (as I thinke) the fourth.

*W. Peuerell* giues to the Monks of *Hatfield*  
 “ *Decimam denariorum meorum de Meldona,*  
 “ & *rectam Decimam de Dona de omnibus re-*  
 “ *bus de quibus rectè datur Decima.* And then  
 addes Churches of other places *cum Decimis.*  
 that was in *Henrie* the first’s time.

*Out of Matthew Paris \* his liues of the*  
*Abbots of S. Albons.*

\* In Biblioth.  
 Cotton.

In the time of Abbot *Paul*, vnder *Henrie* the  
 “ first. *Data est, saith be, huic Ecclesiæ Decima*  
 “ *de Cundella, & Decima de Rigentona, & De-*  
 “ *cima de Roniges, & de Brethelham, & de Her-*  
 “ *laga, & de Thamisesford, & de Cliftona, & De-*  
 “ *cimæ quatuor villarum istarum s. Huntelege,*  
 “ *Geribebam, & de Brunfield, & Redlang. Et*  
 “ *duæ partes Decimæ villarum istarum s. Se-*  
 “ *dintonæ & Boctonæ. Et tota Decima de Trum-*  
 “ *pinton, duæ partes Decimæ de Wacerleia. Por-*  
 “ *ro in Hertfordjra duæ partes Decimæ de E-*  
 “ *senden & Beisford, & de Herisfordingbirie. and*  
 other like.

\* In eadem  
Biblioth.

*Out of the Chartularie \* of the Priorie of  
Boxgraue in Suffex.*

About the yeer M. C. L. X. X. X. a confirmation is made by *William S. Iohn*, of what had been formerly granted to the Priorie by his Ancestors; and among other possessions, occurs  
 “ *Decima de Chienore, and Decima omnium*  
 “ *memorum suorum de honore Halnaci in pais-*  
 “ *sone & venditione, & alijs exitibus.* And this *William* for the maintenance of a fourteenth Monk (there being but thirteen by the first foundation) which he added, gaue, *Decimam gabulorum suorum de Estretintona*, and other places. & *ex dono Petri de Hampton decima molendini sui*, is related to be theirs.

The same *William* in another Charter grants,  
 “ In subscriptis Ecclesijs scilicet *Walborton*,  
 “ *Bernabam, Hantoneta, Honeffum, Mundebam*,  
 “ *duas portiones de terris & decimis omnibus*  
 “ *quæ ad ipsas pertinent (for the third parts were*  
 “ *assigned by him, and the Bishop, and the Prior to*  
 “ *Vicarages)* & in omnibus præscriptis Eccle-  
 “ *sijs aduocationem liberam & præsentationem*  
 “ *Presbyterorum qui in sua persona in illis Ec-*  
 “ *clesijs Deo assidue deseruiant &c.* Et reddidi  
 “ *Decimam Gabulorum de Stretinton*, videli-  
 “ *cet V I I I. solidos per annum; and the Tithe*  
 of other Rents.

*Robert S. Iohn*, brother of this *William*, giues  
 De-

“ Decimam omnium gabulorum de *Walborton*,  
 “ & Decimam omnium gabulorum totius vil-  
 “ læ de *Bernham* quam frater meus *Willielmus*  
 “ de *S. Iohanne* dedit mihi, ad tenendum in ser-  
 “ uicio Dei quartumdecimum Monachum in  
 “ Conuentu *Boxgrae*, quia prius solum trede-  
 “ cim fuerant. Quod si quartusdecimus ibi de-  
 “ fuerit, *Tusinus* nepos *Duneline* vel hæres suus  
 “ colliget & tenebit eas vsque ad annum inte-  
 “ grum; si verò ultra; dabuntur pauperibus &  
 “ viduis, & Orphanis duarum villarum. Teste  
 “ *Willielmo* de *S. Iohanne*, *Waltero* & *Willielmo*  
 “ *Capellanis*, *Rogero Hai*, & *Thoma* filio suo, *Ro-*  
 “ *gero* de *Kaisnei*. And a confirmation is there  
 also by *William S. Iohn* of the gift (that is of the  
 profits receiud by the Lord in mony or rent.)  
 which lay indeed properly in the Lessors grant.  
 and therefore also *William* the Lessor had by an-  
 other Charter granted those *Decimas Gabuli* to  
*Robert*, to the same purpose, which he expresses  
 in his Deed of consecration to the Priorie. the  
 Lessor's grant to him, the confirmation and his  
 consecration were enough to settle this Tithe-  
 rent in the Monasterie. but cleerly this could not  
 haue discharged any former right of Tithes in  
 kind payable out of the Land.

The Churches of *Warberton* and *Bernham* and  
 the rest before named with others, were, with  
 the belonging Tithes, appropriated to the  
 Priorie, but the Tithes alone of *Thadeham* and

*Kienor* (which they call *Chienor*) were by grant from the Ancestors of the *S. Johns*, settled in the Priorie and neuer named with any Church, as appears in sundrie Confirmations of them. So also is *Decima de Liperinges*, in the ratification of such Grants to them made about that time by *Iohn* and *Seffrid* Bishops of *Chichester* and *Richard* Bishop of *Canterburie*. Of that Tithe of *Liperinges* see more within a few lines.

“ Sciant præsentēs & futuri quod ego *Richar-*  
 “ *du* de *Tresgoz*, filius *Philippi Tresgoz*, dedi &  
 “ concessi, & hac præsentī Carta mea confir-  
 “ maui Deo & Ecclesiæ B. Mariæ de *Boxgræue*,  
 “ & Monachis ibidem Deo seruientibus pro sa-  
 “ lute animæ meæ & vxoris meæ & antecesso-  
 “ rum meorum, & vt missa pro anima mea, &  
 “ vxoris meæ, & pro animabus patris & matris  
 “ meæ, & antecessorum meorum, in prædicta  
 “ Ecclesia de *Boxgræue*, ter in vnaquaque septi-  
 “ mana celebretur, omnes donationes quas ha-  
 “ bent de donationibus *Philippi* patris mei &  
 “ antecessorum meorum tam in terris quam in  
 “ Decimis magnis & minutis, in Manerio meo  
 “ de *Hamptunete*. Et insuper dedi & concessi &  
 “ hoc scripto autentico confirmaui prædictis  
 “ Monachis de *Boxgræue*, omnes minutas deci-  
 “ mas de prædicto Manerio meo de *Hantunete*,  
 “ scilicet in agnis, in vitulis, in pullis, in porcis,  
 “ in aucis, in lanis, in caseis, in pomis, in fructi-  
 “ bus, & in omnibus alijs rebus vndecunq; De-  
 “ cime.

"cimæ Sanctę Ecclesię spectant aut prouenire  
 "debent tam maiores videlicet quam minores.  
 "Et vt hæc mea donatio & concessio perpetuæ  
 "firmitatis robur obtineat eam præsentis scripti  
 "testimonio & sigilli mei munimine roborau.  
 "His testibus *Roberto* persona de *Storbetune*,  
 "*Stephano* Capellano, *Philippo Bernbuse*, *Wil-*  
 "*lielmo Picoth*, *Willielmo Purcaz*, *Philippo de*  
 "*Perbam*, & multis alijs. This was in the same  
 time, vnder *Henrie* the second.

*Geffrey* of *Coleuill* giues to the Priorie De-  
 cimam de *Kienore* de toto dominio meo in  
 "terris cultis & incultis in *Pomerijs* in *Pisca-*  
 "rijs & *Molendinis* in perpetuam & liberam E-  
 "leemosynam saluâ tertia portione totius Deci-  
 "mæ præfatæ de Dominio meo quæ ad Ecclesi-  
 "am de *Hidlesbam* pertinet cum tota Decima de  
 "vilanagio meo. Et vt hoc firmiter teneatur,  
 "sigillo meo confirmaui hoc scriptum his testi-  
 "bus *Humfrido de Sartiill* &c.

*Robert* of *Coleuill* grants them Duas por-  
 "tiones Decimæ Garbarum de toto dominio  
 "meo de *Kienore* in perpetuam & liberam E-  
 "leemosynam ex donatione antecessorum meo-  
 "rum ijs prius collatam.

"Sciant præsentis & futuri quod ego *Radul-*  
 "*phus* de *S. Georgio* & *Agatha* vxor eius & *Ala-*  
 "*nus* hæres eorum dederunt & concesserunt  
 "Deo & *S. Mariæ* & Monachis de *Boxgrau*  
 "Decimam de *Liparinges* in perpetuam Elee-  
 mosynam.

"mosynam quam prius dederat eis *Basilie* mater  
 "ipsius *Radulphi*. Et ipsi Monachi debent fa-  
 "cere habere Ecclesiasticum seruitium in Eccle-  
 "sia sua de *Icbenora* vel in Capella sua de *Brid-*  
 "*deham* hominibus prædicti *Radulphi* moranti-  
 "bus apud *Liparinges*, & in singulis Hebdoma-  
 "dis vnum seruitium pro anima *Basilie* & pro  
 "cunctis fidelibus defunctis donec prædictus  
 "*Radulphus* vel hæredes sui ibi fecerint quod-  
 "dam Oratorium, in quo vnus de Capellanis  
 "Monachorum faciet prædictum seruitium in  
 "Hebdomada. Testibus *Ranulpho* Capellano  
 "*Ricardo* Capellano de *Boxgraeue*, *Roberto Le-*  
 "*gato*, & alijs multis. This was about King  
*Iohns* time.

\* In Biblioth.  
 Cotton.

*Out of the \* Chartularie of S. Neots or  
 Needs in Huntingdonshire.*

"Omnibus Sanctæ Matris Ecclesiæ filijs Se-  
 "berus de *Quincy* salutem. Sciat is me concessisse  
 "& confirmasse Monachis S. *Neoti* Decimatio-  
 "nes quas antiquitus habuerunt de terra mea in  
 "*Grantesete*, s. totam Decimationem dominio-  
 "rum quæ fuerunt *Roberti Fafiton* in eadem  
 "villa tam terrarum quam virgultorum. His te-  
 "stibus &c. A like Instrument of Confirmati-  
 "on from him, is of two parts of the Tithes of  
*Subo*, and of a third part of the Tithes of *Eins-*  
*burie*, which had been likewise formerly settled  
 by arbitrarie consecration, in the Monasterie.  
 This

This was about the fourth year of King *Iohn*, and was confirm'd by the Bishop of *Ely*.

“ Sciant præsentēs & futuri, quod ego *Albi-*  
 “ *mus Fasiton* concedo & per hanc Cartam con-  
 “ firmo Deo & Ecclesiæ S. *Neoti* fraatribusque  
 “ meis, eiusdem Ecclesiæ Monachis, Decimam il-  
 “ lam quam *Robertus Fasiton* auus meus & *Eu-*  
 “ *stachius* pater meus eis dederunt & concesserunt, s. de terris & pecunijs totius dominij mei  
 “ in *Grantesete* & in *Subo* & in *Weston* duas par-  
 “ tes Decimæ: & iuxta Ecclesiam de *Grantesete*  
 “ vnā mansuram quam pater meus cum eadem  
 “ Decima eis concessit &c. Hoc donum factum  
 “ est anno quo Rex Angliæ *Henricus* secundus  
 “ duxit exercitum apud *Tolosam*.

“ Sciant præsentēs & futuri, quod ego *Galfri-*  
 “ *dus* filius *Suani* & *Hathewis* vxor mea & *Adam*  
 “ filius noster concessimus Deo & Ecclesiæ sancti  
 “ *Neoti* & Monachis *Beece* (*this Priorie was a*  
 “ *Cell of the Abbey of Bec in Normandie*) ibi-  
 “ dem Deo seruientibus, pro salute nostra, duas  
 “ partes Decimæ bladī & omnium rerum quæ  
 “ Decimari debent illius Hydæ terræ in *Croxton*  
 “ quam tenuit *Adelwoldus Flammangus* auus  
 “ prædictæ *Hathewis*, quas ipse dedit Ecclesiæ  
 “ S. *Neoti* in perpetuam & liberam Eleemosy-  
 “ nam. T. &c.

“ Ego *Robertus Wasse* concessi Deo & S. *Ma-*  
 “ *riae Beece* & S. *Neoto* Confessori & Ecclesiæ  
 “ eius de *Ernelesberia* & Monachis qui inibi de  
 serui-



“seruiunt, duas partes totius Decimæ meæ de  
 “*Wereslai* in omni videlicet substantia mea, in  
 “segetibus & animalibus vnde Decima dari de-  
 “bet, & hoc fieri præcipuè pro anima *Sæni de*  
 “*Esseffa* & pro salute domini mei *Roberti* filij  
 “prædicti *Sæni* qui mihi hanc terram dedit &  
 “pro salute *Gonnor* vxoris suæ & pro salute  
 “mea & vxoris meæ & *Willielmi* filij *Gerei* pa-  
 “tris sui & pro anima patris mei & matris meæ  
 “& fratris mei & omnium amicorum & anteces-  
 “sorum meorum &c. This was afterward con-  
 firmed by the heires of *Robert Wasse*. but in the  
 Confirmations it appears, that *Torold Wasse* had  
 also granted it before *Robert*. *Torold*, I thinke,  
 was *Roberts* father, and had granted it about  
*Henrie* the second his time.

In the Titles of the Deeds there, is *Carta Ro-*  
*berti de Ferrers de Decimis de Benewell*. but the  
 Charter it selfe is wanting.

\* In eadem  
 Bibliotheca.

*Out of the Chartularie of the \* Hospitall*  
*of S. Leonards in Yorkshire.*

“*Stephanus* Rex Angliæ Archiepiscopo *Ebo-*  
 “*rum*, Iusticiarijs, Vicecomiti, Baronibus, mi-  
 “nistris & omnibus fidelibus suis *Eboracshire*,  
 “salutem. Sciatis quia concessi & dedi in per-  
 “petuam Eleemosynam pro anima Regis *Hen-*  
 “*rici* Auunculi mei, & pro salute animæ meæ,  
 “& *Matildis* Reginae vxoris meæ, & *Euslaby* fi-  
 “lij mei, & aliorum puerorum meorum Deo &  
 Hospitali

“Hospitali Sancti Petri Eborum omnem Decimationem de Theloneo villæ de *Thicabilla* & omnem Decimationem Molendinorum eiusdem villæ & præter hæc V. bouatas terræ in *Wlnetbuat*, & vnam bouatam in campo de *Bagalaia*. Quare volo & firmitè præcipio quod benè & in pace & liberè & quietè & honorificè hanc Eleemosynam teneant, quicunq; honorem de *Thicabilla* habeat, sicut Eleemosynam Deo & pauperibus Christi in perpetuum datam. Teste *Henrico de Essex* & *Adam de Belin* & *Willielmo de Clarafai* apud S. *Edmundum*. But in the Bulls of Confirmation from diuers Popes made to the Hospitall, no mention is of these Tithes.

*Out of a Ms. of Constitutions, \* Charters, and Writs, touching the Prouince and Church of York.*

\* In *Rebus*, *antiquis*.

“*Ael Dei gratia Carleolensis* Episcopus. Omnibus sanctæ matris Ecclesiæ fidelib⁹ in Christo salutem, & orationem : Notum sit omnibus & videntibus & audientibus has literas me dedisse & concessisse Decanatui *Eborum* & *Willielmo* Decano & omnibus eius in Decanatu successoribus Decimas Molendinorum de *Popelinton* & de dominio meo & de tota socha. Sic enim prouisum fuit & constitutum à Rege *Henrico*. Constitutum autem & confirmatum est de omni possessione debere Decimas dari

“ tam in Molendinis quam in rebus alijs, ideoq;  
 “ autoritate Apostolicâ & nostrâ per excommu-  
 “ nicationis sententiâ prohibemus ne aliquis  
 “ has Decimas Molendinorum auferre & dimi-  
 “ nuere præsumat, Regia tantum dignitate ex-  
 “ cepta, in quam nullam dare præsumimus sen-  
 “ tentiam. *Valete.* This *Ael* is *Ætbelulph*, the  
 first Bishop of *Carleol*, Confessor to *Henrie* the  
 first, who first made it a Bishopric in M. C.  
 XXXII.

*Out of old Charters remaining in the  
 hands of that Noble Knight Sir  
 Robert Cotton.*

*suffix.*

“ R. Dei gratia *Cicestrensis* Episcopus G. De-  
 “ cano cæterisque fidelibus Sanctæ Ecclesiæ sa-  
 “ lutem & benedictionem. Sciatis me concessisse  
 “ *Brunkino de Hasting* dare Decimam suam to-  
 “ tam de dominio suo de terra quam ipse tenet  
 “ in Marisco de *Penensel* Deo & Ecclesiæ sancti  
 “ *Martini de Bello* (to the Abbey of *Bartell*)  
 “ pro anima sua & omnium parentum suorum  
 “ salute. Concedo etiam hanc Decimam & om-  
 “ nes alias Decimas quas ipsi Monachi de *Bello*  
 “ habent in Parochia mea quatenus eas liberè &  
 “ quietè teneant & possideant imperpetuum abs-  
 “ que omni molestia, videlicet nominatim Deci-  
 “ mam *Vulwini de Henam*, Decimam *Sewini de*  
 “ *Glutintune*, Decimam *Lewini de Badeberste*,  
 “ Decimam quam Parochiani Ecclesiæ Sanctæ  
*Mariæ*

“ *Mariæ de Bello dant de Nedrefelde*, Decimam  
 “ quam *Ailricus de Ora* dat, Decimam de *He-*  
 “ *linsalde* quam ipsi Parochiani Sanctæ *Mariæ*  
 “ de *Bello* dant, Decimam de *Bocbolte*, & Deci-  
 “ mam de *Brombam* quam *Ailwi* & *Ætbelida*  
 “ dederunt cum filio suo *Benedicto* quando esse-  
 “ ritus est Monachus absque omni calumnia in  
 “ perpetuum tenendam. Similitèr etiam & om-  
 “ nes Ecclesias & Decimas quæ eidem Ecclesiæ  
 “ datæ sunt, vel quas eadem Ecclesia & Mona-  
 “ chi tenent in Parochia mea ut eas liberè & qui-  
 “ etè teneant Episcopali autoritate confirmo.  
 “ Unde vobis & omnibus successoribus vestris &  
 “ omnibus Christi fidelibus me eis inde aliquam  
 “ molestiam, vi, aut venditione, vel qualibet oc-  
 “ casione faciatis, super anathematis vinculo de-  
 “ fendo. T. *Henrico* Archidiacono, *Rad.* Ca-  
 “ pellano, *Calone* Cantore. Neither the whole  
 name of the Bishop, nor the date, are found in  
 the Instrument. But it appears by the hand, and  
 that *R.* designing the name, to be of the time of  
*Henrie* the first, and made by *Ralf* then Bishop  
 of *Chichester*.

In a Deed of *William* Earle of *Warren* and *Surry*, made in the time of King *Stephen* to the  
 Priorie of *Lewes* in *Suffex*, after some immuni-  
 ties giuen them in all Lands which they held of  
 “ his see, this Grant follows: *Dono etiam illis*  
 “ de omnibus dominijs meis plenariam Deci-  
 “ mam, videlicet, de *Blado*, de *Fæno*, de *Agnis*,

"de Velleribus, de Caseis, & plenariam Deci-  
 "mam denariorum de omnibus redditibus meis  
 "de *Anglia*. Quamuis autem ex illis denarijs  
 "in procuracione mea siue aliorum quorumli-  
 "bet expendatur, ex illis tamen plenaria supra-  
 "dictis Monachis reddatur Decima. Et si do-  
 "minium meum aut redditus mei creuerint, eo-  
 "tenus crescat & Decima Monachorum. Hæc  
 "supradicta ego pro salute animæ meæ & pro  
 "animabus antecessorum meorum prædictis  
 "Monachis concessi & hac mea præsentī Carta  
 "confirmaui quando feci dedicari Ecclesiam  
 "Sancti *Pancratij* (that is, the Priorie of *Lew-*  
 "*es*) & de Decima denariorum de omnibus red-  
 "ditibus meis de *Anglia* dotaui ipsam Eccle-  
 "siam, & inde seisiui eam per capillos capitis  
 "mei & fratris mei *Radulphi de Warennā*, quos  
 "abscidit cum cultello de capitibus nostris ante  
 "altare *Henricus* Episcopus *Wintoniensis*. Teste  
 "*Teobaldo* Archiepiscopo *Cantuariensi*, *Henri-*  
 "*ca* Episcopo *Wintonensi*, *Rodberto* Episcopo  
 "*Bath. Ascelino* Episcopo *Rouecestr.* qui eandem  
 "Ecclesiam dedicauerunt, & Teste *Edwardo*  
 "Abbate *Rading*, *Waltero* Abbate de *Bello, wal-*  
 "*tero* Priore *Cantuariensi*, *w. . .* Archidiacono  
 "Cant. *Richardo* Decano *Cicestr.* *Rodberto* Ar-  
 "chidiacono, *Iohanne* de *Pagham*, *Willielmo*  
 "Comite *Cicestr.* *Rad.* de *Warrenna*, *Reg.* de *War.*  
 "*Hugone* de *Petrep.* *Radulpho* de *Pleix*, *Rod-*  
 "*berto* de *Wesneuell*, *Rodberto* de *Friewill*, *Rod-*  
 "*berto*.

“ *berto de Petrep. Willielmo de Petrep. Adam*  
 “ *de Puninges, Guidone de Mercecurt, Williel-*  
 “ *mo filio suo, Willielmo de Droscio.* The intent  
 of this was to settle the Tithes of all his reuenues  
 wheresoeuer through *England*, in the Priorie. in  
 kind, of his demesnes ; in mony, of his Rents,  
 neither did he grant only the Tithe of what he  
 then was seised of, but of all future purchase al-  
 so and improuements. that liuerie of seisin, as it  
 were, made vpon the Altar by the Haire of the  
 head both of the Grantor and of his brother, is  
 not without other example of those ancient  
 times wherein both Tithes <sup>a</sup> and other possessions  
 were solemnly consecrated, either by haire, or a  
 horn, or a cup, or a knife, or a candlestick, or  
 whateuer that might be really deliuered on the  
 Altar. For, the forme of conueiance in perpetu-  
 all right, both to the Church and Laitie, was to  
 giue into <sup>b</sup> the hands of the Grantee or Feoffee  
 some such thing, as at this day a Twig or a Turff  
 is in feoffments. or as in Institutions (according  
 to the Formularie of the Court of *Rome*) a Ring  
 is to be giuen. and the Altar was vsually made  
 the place of such a liuerie. But in the examples  
 of cutting the haire especially in this where *Hen-*  
*rie* Bishop of *Winchester* doth it, perhaps more  
 was vnderstood then only a liuerie vpon the  
 grant. had it not also some reference to the an-  
 cient ceremonie of cutting the haire at a Confir-  
 mation? which was vsually done by the Godfa-

a Vilefis App.  
ad Const. Laitian.  
part. 47. cap. 5.

b Jo. ulph. iust.  
fol. 512. b.

*De Mirac. S.  
Benedicti lib. 1.  
cap. 14.*

thers, as may be collected out of that of *Adre-  
uald*, where <sup>c</sup> he speaking of *Charles Martell*,  
saies, that *Pepigit hic fœdus cum Luitprando, eiq;  
filium suum Pipinum misit ut more Christianorum  
fidelium eius capillum primus attonderet, ac pater  
illi spiritalis existeret.* I dare affirm nothing with  
confidence herein. But it is specially obseruable  
that this Charter of the Earle of *Surrey* was not,  
it seems, made without great aduice as well as  
testimonie, both of Clergie and Lay men. wher-  
to you may adde the iudgement of *Theobald*  
Archbishop of *Canterburie*, in his reprehension  
of *Ala*, Countesse dowager of *Warren* and *Sur-  
rey*, for not payment of the Tithes of her dowrie  
according to the Grants of the Ancestors of her  
husband. The original of the admonition to her,  
speaks thus : <sup>d</sup> T. Dei gratia Cantuariensis  
“ Archiepiscopus Anglorum primas & Apo-  
“ stolicæ sedis Legatus. Dilectæ filiæ suæ *Alæ*,  
“ Comitissæ *Warennæ* salutem. peruenit ad au-  
“ res nostras religiosorum fratrum *Lewensis* Ec-  
“ clesiæ Monachorum, stupenda querimonia  
“ quam cum ipsi ex antiqua donatione Comi-  
“ tum *Warrenæ*, videlicet *Aui* & patris *Wil-  
“ lielmi* viri tui, & sui ipsius etiam antequam  
“ Dotem tuam consecuta fuisses, de omnibus  
“ Dominijs Comitum Decimationem Denario-  
“ rum semper inconcussè, tanquam Ecclesiæ suæ  
“ dotem possederint, tu, post perceptam dotis  
“ tuæ inuestituram, eiusdem fratribus ipsam De-  
“ cimationem,

*d In Thesaur.  
Cottoniano.*



" cimationem, quæ ad Dotem tuam spectabat,  
 " subtraxeris. Quod si ita est, vehementer admi-  
 " ramur cum eorum quæ Deo & Ecclesiæ suæ in  
 " eleēmosynam collata esse noscuntur nihil dori  
 " tuæ vendicare debeas nec possis. Crudele n.  
 " est & sacrilegio proximum quod super diui-  
 " num Altare semel deuote oblatum est iterum  
 " repetere, & ad secularia transferre. proindē  
 " tibi salubritē consulimus, & in Domino ad-  
 " monemus quatenus sicut vis ius tuum tibi à  
 " Deo liberè conseruari, ita ius suum cum inte-  
 " gritate Monachis relinquas. & nullatenus da-  
 " tam eis denariorum decimationem dotis tuæ  
 " retineas; alioquin eis in iustitia deesse non  
 " poterimus, cuius debitores omnibus existim⁹.  
 Although he speaks only of the *Decimatio dena-*  
*reriorum*, yet in regard that he mentions it with  
*de omnibus Dominys Comitibus*, it cannot be well  
 vnderstood otherwise then of all the Tithes of  
 the Earles possessions, according to the former  
 grant.

Richard de Muchegros about King Iohns time,  
 confirms to the Abbey of *Perfore* two parts of  
 the Tithes which was wont to be paid to it out  
 of his land of *Wlhaueshulle*, *tam bladi quam lini*  
*& feni* (*exceptis linis Curtilagij mei de Dominico*  
*meo de Wlhaueshulle*) as also the third part of  
 the Tithes of his Tenants there, and further  
 grants them *Duas partes decimarum bladi de om-*  
*nibus assartis meis ibidem de nouo factis & de om-*  
*nibus*

*nibus assartis per me vel per heredes meos in posterum faciendis &c.* this is sealed. the seale is circumscribed with ✚. *S. Richardi de Wlbauesbule.*








W. Prior of *Lewes* in *Suffex* giues in 44. Hen. 3. foreuer to the Priorie of *Southmark*, *Decimas quas habuimus de Dominico Henrici de Hologhe apud Reygate*, reseruing yeerly two shillings and six pence to be paid for them to the Sacristein of the Priorie of *Lewes*. How could this Tithe haue been in the Prior of *Lewes* to haue granted, without a precedent consecration from *Hologhe*, or some other, from whom he had deriud his estate?

“ Willielmus Dei gratia Wintoniensis Episcopus, Stephano Archidiacono, & omni  
 “ Clero *Surreia* & Baronibus, salutem & benedictionem. Notum sit vobis quod *Siwardus*  
 “ de *Ealdestede* venit, me praesente ad *Sudwer-*  
 “ *chiam*, ibique super Altare diuina praeventus  
 “ gratia obtulit Decimam de *Hludebrake* Deo  
 “ & eiusdem genitrici & Virgini Mariae, & Canonici  
 “ ibidem Deo seruientibus perpetually  
 “ ter, & hoc meo consensu. Quare iubeo ex  
 “ parte Dei & mea ne quis eam retineat vel ab  
 “ eadem loco auferat, vel possidentes illam per-  
 “ turbet. Si quis vero citra hoc praecceptum  
 “ quicquam inde facere praesumpserit, perpetuo  
 “ anathemate feriatur. Cuius rei testes isti sunt  
 “ *Henricus de Twin*, *Stephanus* Archidiaconus,  
 “ *Liuingus de Coleces* Canonicus, *Rogerus* Ca-  
 “ nonicus,

“ nonicus, *Helias* Dapifer, *Iohannes* Capellan”,  
 “ *Richerius*, *Vitalis* de *Wicford*, *Gozo* Clericus  
 “ de *Misbeam*, *Oswardus* Monetarius, *walche-*  
 “ *linus*. This was in the time of *Henrie* the first,  
*WVilliam Giffard* being then Bishop of *Winche-*  
*ster*. the seal remains to it.

*WVillielmo* Dei gratia Norwicensi Episcopo,  
 “ Archidiaconisq; suis de *Sudsole*, omnibusq;  
 “ sanctæ Matris Ecclesiæ filijs, *Galfridus* filius  
 “ *Roberti* & vxor sua *Anneis* in Domino salu-  
 “ tem. sciatis nos concessisse Ecclesiæ Aposto-  
 “ lorum Petri & Pauli de *Gipeſwico*, & Canoni-  
 “ cis Regularibus ibidem Deo seruientibus in  
 “ perpetuâ eleēmosynâ Decimam molendini de  
 “ *Hagenford*, scilicet VII I. solidos annuatim,  
 “ duos ad Natiuitatem Domini, duos ad Pa-  
 “ scha, duos ad festiuitatem S. Iohannis, duos  
 “ ad festiui:atem Sancti Michaelis, & dimidiam  
 “ marcā argenti de *Fachendune*, & Decimam  
 “ foeni, & omnia quæ habent infra villam de  
 “ *Broches*, & extra ad eam pertinentia tam in  
 “ terris quam in Decimis & redditibus, & in  
 “ omnibus libertatibus datis prædictis Ecclesiæ  
 “ à prædecessoribus & parentibus nostris &c.  
 Vnder King *Stephen* it was made; and hath a  
 seal annexed.

*Out of an Originall Charter of K. Stephens, made  
to the Priorie of Eye in Suffolk. It was in the  
hands of that Learned and Honorable the  
L. William Howard. I had the vse of  
it through the courtesie of that  
Noble Knight Sir Robert  
Cotton.*

Quoniam, diuinâ misericordiâ prouidente,  
cognouimus esse dispositum, & longe lateq; præ-  
dicante Ecclesia, sonat omnium auribus divul-  
gatum, Quod eleëmofynarum largitione possunt  
absolui vincula peccatorum, & adquiri cœlesti-  
um præmia gaudiorum: Eg.  Stephanus Dei  
gratia Anglorum Rex, partem habere volens  
cum illis qui foelici commercio cœlestia pro ter-  
renis commutant, Dei amore compunctus; &  
pro salute animæ meæ  & patris mei, matrisq;  
meæ, & omnium parentum meorum  & ante-  
cessorum meorum Regum  Willielmi scilicet  
Regis Aui mei  & Willielmi Regis Avunculi  
mei  & Henrici Regis Avunculi mei,  & Ro-  
berti Malet, & consilio Baronum meorum, con-  
cedo Deo & Ecclesiæ Sancti Petri de Eia &  
Monachis ibidem in Deo seruitio congregatis,  
vt habeant omnes res suas quietas & liberas ab  
omni exactione, & teneant eas in Terris, in De-  
cimis, in Ecclesijs, in omnibus possessionib<sup>9</sup> sicut  
vnquam melius & honorabilius tenuerunt tem-  
pore Roberti Malet, & tempore meo antequam  
Rex

Rex essem; cum *Soca & Saca, & Tol & Tiem & infanganasbief.* ✠ Præcipio etiam vt teneant de quocunq; tenebant (& non mittantur in placitum) sicut tenebant die quam *Henricus* Rex fuit vivus & mortuus, & die qua ad Regni Coronam perueni. Sit etiam ipsa Ecclesia in meo Dominio cum rebus subscriptis. Concedo Ecclesiam de *Holeste*, de *Dineuet*, de *Bordenis*, de *Sutun*, de *Stadebroc*, de *Wingefel*; Et mercatum & theloneum de *Oreford*; præter nantium quæ pertinent ad firmam de *Donerou* \* pp ✠ \* *Fuit propter.*  
 XXX. sol. Ecclesiam ipsam vbi Monachi habitant cum terris suis; Decimam de *Eia*, Duodecim solidos de foro, vnam feriam per quatuor dies ad festum *Sancti Petri* Kalendas Augusti, nullusq; in feria habeat potestatem nisi Monachi & homines eorum, & omnes illuc venientes & inde redeuntes habeant meam firmam pacem, nullusq; eos in aliquo disturbet super X. libras forisfacturæ. ✠ Habeat etiam Ecclesia eandem libertatem de Episcopo, de Archidiacono, de Decano, quam habuit à tempore Regis *Eadwardi*, & à tempore *Eadrici* de *Lexesfelda* & Regis *H.* ✠ Sitq; de Priore ponendo & remouendo sicut cõstitutum fuit in tempore *Roberti Malet*. ✠ Habeat etiam omnes Decimas de Manerijs sicut habuit in tempore *Roberti Malet*, scilicet de *Eia*, *Stadebroc*, *Radingesfeldia*, *Dineuet*, *Tattinget*, *Bedingham*, *Keleton*, *Olesteia*, *Leeft*, *Donewic*, *Lessesfeld*, *Bergebi*, *Welleburn*, *Seggebroc*.

*Colum. Caue.* ✠ Concedo etiam Ecclesias has, De *Beweseia*, *Seggebroc*, *Pergebi*, & Ecclesias de *Donewico*, quæ factæ sunt & faciendæ. De *Bedingeham*, *Lessfeld* & *Presbyterum* eiusdē villæ, & de omnibus meis filiis Decimam pascuagij. Piscariam etiam de *Wells*. Atq; totam *Bedesfeldiam*, *Storas*, *Pelecoc*, *Fraisingefeld*. Hoc etiam terræ quod habebant tempore *Roberti Malet*. in *Bedingeham*, & omnia inconcussè teneant. Concedo etiam Ecclesiam *Sancti Botulfi* de *Ica* cum appendicijs suis quam dedit *Willielmus* de *Rouill*, & *Beatrix* vxor eius, & terram *Godem*. de *Lakl*. & ea quæ habebant in *Donewico* eodem *Roberto* viuente. ✠. Horum igitur supradictorum *socam* & *sacam* in omnibus concedo, & nominatim in *Donewico* & Decimas meorum hominum; *Walteri* scilicet *Arbalestarij*, & Ecclesiam *Sancti MARGARETÆ* de *Halgestowe*, & terram quæ ei pertinet. Decimam quoq; *Rogeri* filij *Walteri* de *Huntingefeld*, & de *Benges*, *Ricardi Houcell* de *Wiuerdest*, de *Gestingsesb*, *Richingebal*, *Reindun*; Decimam *Hugonis* de *Aluilario* in *Bram*, & in *Selfbangers*, & hoc quod *Alwin* Presbyter tenet de eo in *Beria*. Decimam *Willielmi* de *Rouilla* in *Clakestorp*, & in *Glemebam*, & de XXX. acris quas tenet *Willielmus Bole* de feudo *Comitis Britannia*; Decimam *Willielmi Gulafri ynchennel*; Decimam *Petri* de *Bedingefeld*; Decimam de *Pleesford*, & Ecclesiam villæ & *Aluricum Delsen* cum sua terra; Decimam

Her-

Hernaldi filij Rogeri in Witingham & Ascheiton;  
 Terram Osberti de Crateuill in Acolt, & hoc  
 quod Benedictus Capellanus tenebat de Rotberto  
 Malato in Decimis, & rebus alijs; Decimam  
 Will. De pesenbale; Decimam Iordani de Wile-  
 bebe; V. sol De pentenbabe, quos Will. de Rouilla  
 dedit; III. solidatas quas tenet Iobannes filius  
 Rotberti; Terram Alwini filij Wulstan in Bede-  
 feld; VII. solidatas quas tenet Wulmer Presby-  
 ter de Codenham; Decimam Hunfridi filij Vnuei.  
 Decimam Radulfi Grossi de Gretinges. XII.  
 solid. de Aquitania in Aldefen; Terram Wul-  
 mari in Akesteia; Et, præter hæc supradicta,  
 concedo eis, quod Decima eorum de Donewico  
 crescat quoque anno in denar. & hareng. &  
 in omnibus alijs rebus secundum hoc quod red-  
 ditus mei ibidem crescent. Teste Nig. Eliensi  
 Episcopo, & Roger. Cancellar. Henrico nepote  
 Regis Stephani; Galer. Com. de Mell. Rotberto  
 filio Ricb. Will. Mart. Adam De Beln. Ioban.  
 Marefc. Hubert. Demunc. Ioban. filio Roth.  
 Vicecom. Gaufrid. fil. VValt. VVill. fil. Rog.  
 Heru. de Glauill. Ricb. de Alenc. Roger de  
 Hofa. Anno ab Incarnatione Domini M. C.  
 XXXVII. apud EIA secundo Anno regni  
 mei, in tempore Ebrardi Episcopi Norwicensis,  
 & Gaufleni Prioris Eie. Ipse Rex subscripsit.  
 Eustachius filius eius subscripsit. Maltildis Re-  
 gina subscripsit. VVillielmus Cantuariensis Ar-  
 chiepiscopus subscripsit. Turstanus Eboracensis,



Archiepiscopus subscripsit. *Alexander Lincoln.*  
 Episcop. subscripsit. *Henricus Winton* Episco-  
 pus subscripsit. *Iohannes Rossensis* Episcopus  
 subscripsit. *Eurardus Norwicensis* Episcopus  
*Simo Wigornens.* Episcopo subscripserunt. *Rot-*  
*bert. Herefordens.* Episcopus & *Robert. Ba-*  
*donens.* Episcopus, & *Gislebertus Londons.*  
 Episcopus subscripserunt. Quicunque aliquid  
 de his quæ in hac Carta continentur auferre aut  
 minuire, aut disturbare scienter voluerint, auto-  
 ritate Domini omnipotentis Patris & Filij &  
 Spiritus Sancti & Sanctorum Apostolorum &  
 omnium Sanctorum fit excommunicatus, Ana-  
 thematizatus; & a consortio Domini & limini-  
 bus Sanctæ Ecclesiæ sequestratus donec resipis-  
 cat & Regiæ potestati XXX. libras auri per-  
 soluat: Fiat. Fiat. Fiat: *Amen Amen. Amen.*  
 It is the fairest hand and largest Charter that  
 euer I saw of that age, and the Seale is yet hang-  
 ing to it. And in a Roll \* of the Benefactors of  
 that Monasterie, verie manie are mentioned for  
 their Donors of Tithes, or two parts, or third  
 parts, of diuers Mannors.

\* In Biblioth.  
 Cotton,

*Out of the Carte antiquæ among the Records  
 of the Tower of London.*

When King *Henrie* the second, and Pope *A-*  
*lexander* the third, dissolued a the number of the  
 Nunnes of *Ambresburie* in *Wiltshire* (by reason  
 of their vnchastitie) and filld the Nunnerie with  
 others

a Vide G.G.7. &  
 F.1. & B.8. &  
 part. 1. Cart. 1.  
*Iohannes* numer. 20,  
 chart. 117.

others out of those of *Font-Euerard* in *Nor-*  
*mandie*, diuers Churches and Parishes were an-  
 nexed by Grant and Confirmation, to the new  
 Companie, and also Tithes seuerally, as *Decima*  
*de Fortesbiria*, & *de Wadhulla* &c. & *Mane-*  
*rium de Etona cum Decima de dominio & medie-*  
*tate Decime rusticorum*, & *Manerium de Chel-*  
*stamstona cum Decima eiusdem Manerij* &c. &  
*Decimam de Ingaslot & de Godingeflor cum*  
*omni iure Parochiali* & *Decima de Hamsted*,  
*cum omni iure Parochiali*. and diuers other such.

*Henrie* the second grants and confirms to  
 the Monks <sup>b</sup> of *Tetford* in *Norfolke*, *Decimam*  
*de Bradleia*, *Decimam de Giffitona*, *Decimam de*  
*Flotendona*, *Decimam de Mosedona*, and manie  
 other such, without mention of Churches or  
 Chappels with them; yet in the same Charter,  
 diuers Churches of other places are by them-  
 selues conueyed or confirmed.

*William* the first giues to the Church of *West-*  
*minster*, *Decimam de Wic de eadem parte que ad*  
*me pertinebat usque iterum reddidi eandem par-*  
*tem eis iniuste ablataam quam R. Edwardus antea*  
*dederat*. Then seuerally follows diuers Approp-  
 riations of Churches. This was in the second  
 of his raigne.

*Henrie* the second giues to the Church of  
*Sarum*, diuers Churches with Tithes, and a-  
 mong them, *Ecclesiam de Durneforda cum terris*  
 & *Decimis quas Walterus filius Richardi &*  
*Isabella*

b G.G. 1. &amp; 2.

c cc. 3.

d Ibid. 30 in dorso.

Isabella de Toeni & reliqui aduocati eiusdem Ecclesie ei dederunt. & omnes Decimas & de Noua Foresta, & de Panetot, & de Bucholt, & de Andeuera, & de Husburna, & omnibus Forestis meis de Wilteshire & de Dorseta, & de Berkshire, de omnibus rebus scilicet de firma, de Pasnagio, de Herbagio, de Vaccis, de Caseis, de Porcis, de equabus & omnes Decimas de omni Venatione prædictarum Forestarum excepta Decima illius Venationis que capta fuerit cum stabilia in Foresta de Windleshora &c. What the Bishop had yeerly, by reason of this Grant, may be seen in Rot. Claus. 5. Hen. 3. Membran. 14. And for Grants from the Kings of the Tithe of Venison, other examples are obuious, as of the Forests of Essex to the Bishop of London, by King Iohn, and of others anciently, of the <sup>t</sup> Tithe of the Venison taken in the Forests in Northamptonshire, to the Abbot of Burie; to omit that of Henrie the first, his Grant of the Tithe of all his Venison taken in Yorkshire, to the Abbot of York, which occurs in the 3. Eire of the Forest of Pickering.

In a Charter of Henrie the first, many Tithes are graunted and confirmed to the Priorie of Mountague <sup>b</sup> in Somersetshire, as *Dua partes Decimarum de Atford, Decima de Crimoc, & medietas Decimorum de Cifelberg, de Clafford, de Northon iuxta Taunton, & Decima domini de Merston, & de Hetecumb, de Candel, de Torp,*

<sup>c</sup> Rot. Chart. 6.  
Ioh. R. ch. 107.  
membr. 13. & rot.  
Rot. 11. Hen. 3.  
part. 1. membr. 5.  
f. Claus. 4. Hen. 3.  
part. 1. membr. 1. &  
Claus. 17. Hen. 3.  
membran. 4. &c.

<sup>g</sup> Fletwood in  
Commentar. de  
iure Forestarum.

<sup>h</sup> Cart. antiq.  
ff. 2.

Torp, de Cernel, item de Cernel, & de tertio Cernel &c.

Henrie the first graunted <sup>i</sup> to the Canons of <sup>i</sup> *K. in d. f. 36.*  
Cambridge, *Decimas de dominio meo de Cantebri-*  
*gia & Ecclesiam S. Egidij &c.*

About 3. Hen. I. Manasses Arsc <sup>k</sup> renewd his <sup>k</sup> *s. 1.*  
Charter to the Abbey of *Fischamp* in *Norman-*  
*die*, and gaue them *apud Sobrinton de suo domi-*  
*nio duas garbas Decime sue*, and so in diuers o-  
ther Mannors. *Dedit & Decimas de cunctis de-*  
*narijs suis & de pullis equarum suarum, de Vitu-*  
*lis, de Ouibus, de Caseis, de Lana & Decimas de*  
*omnibus rebus suis, & Decimas de omnibus homi-*  
*nibus supradictarum villarum.* All which, was  
confirmed by the King. It seemes, that in *De-*  
*cimas de omnibus rebus* the Corne was except-  
ted, according to the first Limitation of his  
Grant.

II. To these might be added more out of the  
Rolls <sup>l</sup> especially of Exemplifications or Con-  
firmations. But the store is large that is alrea-  
die deliuered. And to conclude it, obserue this  
most notable testimonie in a Writ of the Register  
and in *Fitzherbert*, that had reference to the  
common vse of those arbitrarie Grants out of  
demesne Lands at the owners pleasure, without  
vnderstanding of which vse, I shall doubt no man  
thoroughly vnderstands the Writ, nor the true  
ground of any Writ *de aduocatione Decimarum.*  
It is a singular example, and, as I remember, not

<sup>l</sup> Vide Rot. cart. 5.  
R. Ioh. membr. 8.  
cart. 81. & Cart.  
antiq. V. & 6. 7.  
& in Fascicula  
cart. antiq. num. 30.  
&c.

m Regib. orig.  
fol. 10 v. & F. 12.  
N. B. 40. N.

seconded or specially noted elsewhere in our Law books; and therefore I transcribe it whole.

“ Rex <sup>m</sup> tali Iudici salutem. Monstrauit nobis  
 “ venerabilis Pater H. *Lincolniensis* Episcopus  
 “ quod cum I. præcentor Ecclesiæ Beatæ Mariæ  
 “ *Lincoln.* teneat de dono suo omnes Decimas  
 “ Dominicarum terrarum suarum vel Dominici  
 “ sui de N. quas idem Episcopus & prædecesso-  
 “ res sui Episcopi loci prædicti liberè conferre  
 “ consueuerunt : Prior Beatæ *Katherine* extra  
 “ *Lincoln.* clamans Decimas illas pertinere ad  
 “ Ecclesiam suam de B. trahit eum inde in pla-  
 “ citum &c. Et quia placitum prædictum tan-  
 “ git Coronam & dignitatem nostram; præfer-  
 “ tim cum collatio earundem Decimarum ad  
 “ nos possit deuolui ratione custodiæ vel Esca-  
 “ etæ, quia etiam consimiles Decimas conferi-  
 “ mus in quibusdam Dominicis, & similiter  
 “ quamplures magnates regni nostri in Domi-  
 “ nicis suis, vobis prohibemus ne placitum il-  
 “ lud teneatis in Curia Christianitatis, nec ali-  
 “ quid quod in derogationem Regiæ dignitatis  
 “ nostræ cedere valeat, in hac parte attentetis  
 “ seu per alios attentari faciatis quouismodo.  
 “ Teste &c. What can the intent of this be o-  
 ther, then that the Bishop, the King, and manie  
 other Grandes of the Kingdome, did vsually  
 grant or collate the Tithes of their Demesnes;  
 which, because they were so grantable at the  
 owners will, were (by the meaning of this Writ)  
 exempted

exempted from the Spirituall Iurisdiction. But thereof more anon. Perhaps the Writ is immediately to be vnderstood of Tithes collated in like sort as a Church; so that he which collated them, had *aduocationem Decimarum* (which appears also in the *Register*) as any other conferring a Church, had *Ecclesie aduocationem*. If not so; whence could the collation of these Tithes haue originall, sauing only from the making them seuerally a kind of Benefice (vnder the name of *Decimæ seperatæ*, that is, annex to no Church, as the Marginall note in the *Register* well calls them) by arbitrarie Grant at first of the owner, no otherwise then a Church was made a Benefice to be bestowd, by the arbitrarie Ordinance of the Patron, at the foundation? Cleerly, had not the vse of conueyance of Tithes seuerally by Grant, preceded in practice, it could not haue been, that *Quamplures magnate regni* (as the Writ sayes) might *Decimas liberè conferre in dominicis suis*. Tithes alone could neuer haue been collated like a Benefice, had they not been first founded or created as a Benefice. And the Writ might seeme indeed to beare euen the character of the time wherein that vse of arbitrarie Grants of Tithes was known, as of common practice; which I vnderstand to be about King *Iohns* time; and that, before the Popes Decretalls, or other autoritie, had taken away the Lay-mens challenged libertie of granting Tithes seuerally,

according to the former example. And the rather might that coniecture hold, because also the Sigle expressing the Bishops name, is H. which by all likelihood denotes *Hugh* Archdeacon of *Wells*, being L. Chancellor to King *Iohn*, and Bishop of *Lincolne*. But it may be also, that it was had of later time, and at the suit of *Henrie* of *Lexinton*, made Bishop of *Lincolne* in 38. *Hen.* 3. and that, after Parochiall right was more settled. For notwithstanding the settling of it, and making Tithes then payable *de iure communi* to the Parish-Rector, yet it is certaine, that the former Grants (what through generall Confirmations from *Rome*, what through the Lay mens standing vpon their Patronages of Tithes, and vpon the Grantees acknowledgement of their first deuotions in such Consecrations) still continued, and were subiect (in case the *Aduscatio Decimarum* might come in question) to such a Prohibition, vntill some alteration was therein made, as anon shall be shewed, where wee speake of the ancient vse of the Writ of *Indicauit*. But of what time soeuer the Writ was, it is plain, that the ground of it must come from that vse of arbitrarie Consecrations of Tithes, which seuerally also (as in it is supposed) made sometimes a kind of Benefices that might be collated at the will of those who were owners of the Land whence the Tithes were payable. How could Tithes seuerally be collated by any Grandes, but from such originall



nall examples as are already copiously deliue-  
red? A like<sup>n</sup> precedent of a prohibition I have  
seen 7. Ed. 1. which because it so confirms the  
ancient purpose of that in the Register, shall be  
hereat large deliuered. *Edwardus &c. Archi-*  
*diacono Wilteshyr. & eius Commissarijs salutem.*  
*Cum dilecti nobis in Christo Abbas & Conuentus*  
*de Osney ex collatione progenitorum nostrorum Re-*  
*gum Angliæ percipiant & percipi debeant, & ipsi*  
*& prædecessores à tempore collationis illius semper*  
*hucusque percipere consueuerint duas partes Deci-*  
*mæ garbarum prouenientium de dominicis terris*  
*Edmundi Comitis Cornubiæ in Harewell, &*  
*quorundam tenentium suorum eiusdem villæ in sub-*  
*ventionem sustentationis Capellanorum & Cleri-*  
*ricorum in libera Capella nostra S. Georgij in*  
*Castro nostro Oxoniæ ministrantium, Rogerus*  
*de Draytona Persona Ecclesiæ prædictæ villæ*  
*de Harewell, clamans prædictas duas partes ad*  
*eandem Ecclesiam suam pertinere trahit ipsos*  
*Abbatem, & Conuentum inde in placitum coram*  
*vobis in Curia Christianitatis, sicut ex relatu plu-*  
*rium accepimus. Quia verò prædictum placitum*  
*tangit nos & Coronam nostram & dignitatem,*  
*maximè cum consimiles decimas in pluribus Do-*  
*minicis nostris conferamus, & etiam plures Magna-*  
*tes regni nostri consimiles decimas, quarum collatio*  
*ad nos ratione custodiæ deuolui solet, similiter confe-*  
*rant in Dominicis suis, & etiam quia cognitio su-*  
*per iure patronatus huiusmodi Decimarum ad Cu-*

n In *Calixt. Ma.*  
*Canobis Oxiens.*  
in Bibl. Cotton.

riam nostram pertinet, tibi vel vobis prohibemus ne placitum illud teneatis in Curia Christianitatis. T. meipso apud Wodestoke Octauo die Febr. anno regni nostri septimo. Here is plainly vnderstood whole Benefices of only Tithes, to be collated by the King and diuers of his Baronage. as the Tithes of the Kings Garden in *Windsore* are in ° record, collated by *Henrie* the third; and other like sometimes occur. Neither is that Canon of the Councell of *Westminster* held vnder *Hubert* Archbishop of *Canterburie*, in 2. *Iohan. R.* from any other originall to be interpreted, then from those common conueiances and grants of Tithes and Church liuings generally by Lay men to Monasteries. The words are, *P Lateranensis Concilij et tenore perpenso decernim⁹ ne fratres Templi, vel Hospitalis, siue quicunque alij religiosi Ecclesias vel decimas, vel alia beneficia Ecclesiastica, sine Episcopali autoritate de manu Laica recipiant, dimissis etiam quas contra tenorem istam moderno tempore receperant &c.* For howeuer, that in the Councell of *Lateran*, be interpreted (I enquire not how well) of Tithes only infeodated ⁊ into Lay hands; yet in this Kingdom, where those infeodations were not, or were very rare (whereof anon more) \*how can it be well vnderstood but of new Grants or arbitrarie Consecrations of Tithes as well not before in esse, as of others conueid by Inuestiture of Churches. But touching those conueiances of Tithes by Lay men, see more

o Pat. 16. Hen. 3.  
mcmbr. 7.

p Roger. de Haue-  
den. pars. 3. fol.  
460. b.

q Vide extr. tit.  
de Prob. c. in Late-  
ranensi 31. & tit.  
de priuileg. c. 3.  
cum & placare,  
& in Concil. ip-  
so quod plenē  
tantummodo ex-  
tat in editione  
Romana & postre-  
ma Bini.

r Extr. tit. de his  
que fiunt a Prel.  
c. 7. cum Apostolica

more in the XIII. Chapter where we speake of Infeodations.

III. Out of those examples of Conueiances and arbitrarie Consecrations of Tithes (being but a few, and as an essay only of the multitude of them, which might be found in the Lieger books of other Monasteries) may easily be collected, the truth of those assertions in the old yeer books, which haue, without desert, been taken for falsehoods grounded only vpon ignorance. By the practiced Law, cleerly euery man gaue the perpetuall right of his Tithes to what Church he would, although the Canon Law were against it; whereof also notice, it seems, is sometimes taken in those conueiances which haue the words of *Quæ decimari debent*, as if they had said, Tithes of all things which by the Canon Law ought to be tithed, or, *Quæ decimari debent more Catholico*, as the words are in a Charter<sup>b</sup> of about Henrie the seconds time, of Gilbert one of the Earles of Hertford, to the Priorie of S. Marie Oueries in Southwark of the Tithes of Capesfeld. And it is like enough, that according to the recitalls of those Decretalls noted in the former Chapter, in some places deuotion had bred an obedience to the Canons in this point; but, that it was generall through the Kingdome, is most false. and whateuer the Pope wrote from Rome, we know the truth by a cloud of home-bred witnesses. But also those words, *Decimari debent* or *solent*, so often

<sup>b</sup> In Armario Cottoniano.

often occurring, may be vnderstood of such things as vsed to be tithed when Tithes were arbitrarily paid, as among the Gentiles, or Christians, he that offers *de ijs quæ offerri solent*, intimates not so much any necessarie dutie acknowledged by him, as a custome of offering such things, when offrings were arbitrarily made. And although in the book of *Domesday* it be specially found of one *Stori* an ancestor of *Walter of Aincurt*, that he might *sine alicuius licentia facere Ecclesiam* (in *Darby* and *Notinghamshire*) *in sua terra & in sua soca, & suam decimam mittere quo vellet*, as if it had been his singular prerogatiue, in his possessions of *Graneby*, *Mortune*, *Pinnesleg*, and other Mannors; yet was that libertie or prerogatiue aswell of building Churches as arbitrarie conueiance of Tithes not alreadie consecrated either by deed or prescription, common, it seems, to all Lords of Mannors or laige Territories, vntill about the time of *K. Iohn*. For that of Tithes; the examples and authorities before cited iustifie it. For the building of Churches (which considered with the arbitrarie endowments of them with new Tithes, specially belongs also to this disquisition) it was affirmed for a common libertie of the Baronage in letters of *King Iohn* to *Innocent* the third, as you may see in the Popes answer to the King. *Quod enim de consuetudine regni Anglorum* (saies the Pope to him) *procedere regia serenitas per suas litteras*

ter as intimauit, vt liceat tam Episcopis quam Comitibus & Baronibus Ecclesias in feudo suo fundare; Laicis quidem Principibus id licere nullatenus denegamus, dummodo Diocesani Episcopi eis suffragetur assensus; & per nouam structuram veterum Ecclesiarum ius sita non ledatur. It was challenged without licence; but the Pope allows it to the Laitie, so that they had licence from the Bishop of the Diocese, and withall that the new foundations bereaued not ancient Churches of their assigned endowments. But after the time of K. Iohn, few or none of those arbitrarie consecrations are found. yet in Henry the thirds time some were, as you may see in those of Fines taken out of the Chartularie of Gisburn. but remember also they were in the Prouince of Torke.

Neither were those Grants disallowd by either Common or Canon Law here then practised. and in those cases of Tithes that occur among the Epistles of Iohn of Salisbury, who liued in time of Henry the second, no title is made meerly by Parochiall right; but Prescription or Consecration are the grounds whereupon they are demanded. and whereas in the case of Robert Wnegot before Adelelm Archdeacon of Dorchester; the question was there, *super quibusdam Parochianis & Decimis*, and the Actor produced testimonie that he had formerly recovered *ius Parochiale quod petebat cum decimis*; it is cleer that the Tithes were not recovered *iure communi*

Epi. 21. &amp; 24.

as they are at this day belonging to the Parish-  
 Rector, but by speciall title of Consecration or  
 Prescription. and the *ius Parochiale* there, was  
 the right of having the Cure and Offerings of  
 the Parishioners, which had not necessarily an-  
 nexed to it the right of Tithes by the practice of  
 that time. whence it came that *Parochiani* &  
*Decima* are both there mentioned as severall  
 demands in the Actors Libell. and hereof see  
 more anon in the corollarie of the ancient Iuri-  
 diction of Tithes in *England*. and that admoni-  
 tion of *Theobald* Archbishop of *Canterbury*  
 (before cited) to *Ala* Countesse of *Warren*, is  
 obseruable. is it not apparant that he allows not  
 only the arbitrarie Consecrations made by the  
 Earles, but also reprehends her sharply for not  
 performing what they had therein vowed? But in  
 the ensuing times, after that the Canon Law had  
 here gained greater strength, which happend  
 soon vpon *Innocent* the third his thundering out  
 his Interdict against this Kingdom, his Excom-  
 munication against the King, and frightening the  
 subiects with his Bulls stufft with commination,  
 and that against this very point of arbitrarie  
 conueiances of Tithes; it soon came to be a re-  
 ceiu'd Law, that all Lands regularly were to pay  
 Tithes to the Parish or Mother Church accord-  
 ing to the prouision of the Canons. and there-  
 fore vpon Delegation made by Pope *Innocent*  
 the fourth in 49. *Hen. 3.* to the Priors of *S. Tri-*  
*nitie*,

nise, and *S. Bartholomew* in *London*, and the Archdeacon of *Westminster* for the deciding of a controuersie twixt the Abbesse and Nunnes of *Chartris* by *Ely*, and *Robert Passelew* Archdeacon of *Lewes*, about some Tithes of the possession of the Nunnerie in *Barington*, it appears that in *Passelew's* libell, no other title is made, but that the Land lies *infra limites Parochie sue de Barenton*, vnde petit dictam Abbatissam compelli integre ad solutionem dictarum decimarum cum damnis & interesse &c. and some others like are of that time according to the Law that to this day continues, as may especially be found in the books of <sup>u</sup> *Pipewell* and *Osney*. That example is in the Chartularie of that Nunnerie, composed by the cost and pains of *Agnes Aschefeld* Abbess there, and *Henry Bukworth* Bachiler of the Canon Law, about the time of *Henry* the sixt. You may adde to the confirmation of this ending of the ancienter course of arbitrarie consecrations, and the later establishing of Parochiall right in Tithes, that of the *English* \* Monks before cited touching the generall Councell of *Lions*, held in 2. *Ed. 1.* I doubt not but that Parochiall right was long before for the most part settled; but it is not likely that they had so confidently affirmed such a continuing libertie of conueiance of Tithes at the owners will, had they not known that vntill about the preceding ages at least, it had been in common practice

<sup>u</sup> *Mr. in Biblioth.*  
*Coisliniana.*

\* *Sup. cap. 7. §. 1.*



x. *Tower Castle Pet.*  
*Paul 6. Ed. 1. in arce*  
*London,*

both of fact and positive Law, especially in this Kingdom where they lived. Whether this petition in Parliament of 6. *Ed. 1.* may give any light to that assertion of theirs, I know not. *Nicholas of Crainford*, Parson of *Gillingham*, complained to the King, Quod cum Foresta Domini Regis, ibidem sita, sit infra Parochiam suam, quod Dominus Rex Decimam sœni, venationis, pannagij, & aliorum prouentuum ipsius forestæ de gratia & pro salute animæ suæ, & animarum prædecessorum suorum, Ecclesiæ suæ cui de iure communi debentur plenè solui præcipiat, secundum formam supplicationis & exhortationis Apostolicæ porrectam Domino R. apud *Gillingham* quando fuit ibi ad Natale. What was that *supplicatio* or *exhortatio Apostolica*? did not some such thing, coming from *Rome* about the time of the Councell of *Lions*, make the Monks think it a thing agreed vpon in that Councell? it seems here too, that in the Kings case, Parochiall right of Tithes was not yet euery where settled, although the Tithes were encreasing in a Parish.

IV. After this establishment of Parochiall right, new arbitrarie conueiances out of lands lying in any Parish, were not permitted, but ancient consecrations were still retained, and had confirmation either from prescription or Papall priuilege which were, by the Canons, sufficient titles to be pleaded against the common right claimed

claimed by Parish Rectors. And when this innovation grew in Parochiall right, then also the iurisdiction which the common or secular Law had formerly challenged and exercised in detaining the right of Tithes (between the Parish and Parishioner) grew out of vse; and the legall proceeding became to be regularly according to the Canons which brought the practice to be as since it hath continued. But of the ancient iurisdiction more anon. So was it now come to that passe, that no new arbitrarie consecrations might be made of the Tithes of lands lying in any Parish. But yet for such lands as were not Parochially limited, the ancient libertie was retained: and although by the Canon Law the Bishop is to haue all Tithes growing in lands not assigned to any Parish within his Diocese, yet in the monuments of the common Laws such Tithes growing in lands of the Crown, are at the arbitrarie disposition of the King. such places haue<sup>z</sup> been and (I think) are in diuers Forests. And hereof saies Thorp in 22. *Affis. pl. 75. Il soleit estre ley quant il auer certane place qui fuit hors de chescun Paroche come en Englewode, & huiusmodi, en tel case le Roy ad & doit auer les dismes de cest place (& nient l'Euesque de lieu) a grantier a que luy plest.* and relates further, that the Archbishop that yeer made suit to the Councell, to haue had such Tithes. But, vnder fauor this was vnderstood only of the Kings granting the tithes

y Extr. tit. de Decimis c. 13. quoniam

z 14. Hen. 4. fol. 17. b. & Brook tit. Dismes 10.

of his Demesnes occupied by his Bailifes according as in ancient time euery man els did. for whateuer the words seeme to import, *Tborp* speaks only of such lands of the possession of the Crown; in which case, it must not perhaps be vnderstood so much, a part of the Royall prerogatiue as a right due to the King by common Law, in regard of his possession of lands not limited to any Parish. Neither doth he affirm that Tithes of such places are due to be paid to the Crown, but that they are in the King to grant at his pleasure, if growing in his demesnes. But to this purpose is a notable case in the Parliament rolls of \* 18. Ed. I. where *Ralph Bihop of Carleol Petit versus Ecclesia Priorem de Karliel Decimas duarum placearum terre*, of the new assarts in the Forest of *Inglewood*, whereof the one is called *Linthwait*, the other *Kirkthwait*, *Quae sunt infra limites Parochiae Ecclesiae suae de Asparterike &c.* and saies by prescription in his predecessors the Tithes of the pannage there, before the assarting or culture. *Henrie of Burton* also, Parson of *Tboresby*, claimed in Parliament the same Tithes as belonging to his Church, and *infra limites Parochiae suae*. and the Prior comes & saies, that *Henricus Rex vetus* (*Henrie the first*, it seems) *concessit Deo & Ecclesiae suae Beatae Mariae Karliel omnes Decimas de omnibus terris quas in culturam redigeret infra Forestam, & inde eos seofauit per quoddam cornu eburneum quod dedit* Ec-

\* In Receipt.  
Sencouris, & in  
Cod. Vet. apud V.  
C. I. Borough re-  
giorum in arce  
Lond. Scriptorum  
praefectum,

*Ecclesie sue predicta &c.* Whereupon the Kings Attorney, *Dicit quod Decima predicta pertinet ad Regem & non ad alium*, quia sunt infra bundas Forestae de Inglewood, & quod Rex in Foresta sua predicta potest villas edificare, Ecclesias construere, terras assartare, & Ecclesias illas cum Decimis terrarum illarum pro voluntate sua cuicunque voluerit conferre, et quod Foresta illa non est infra Limites alicuius Parochiae &c. Et petit quod Decimae illae Domino Regi remaneant prout de iure debent ratione predicta &c. Et quia Dominus Rex super praemissis vult certiorari, ut unicuique tribuatur quod suum est, William of Vesci, Iustice of the Forest beyond Trent, and Thomas of Normanuill, his Escheator for those parts (for so was the diuision anciently of Eschaetorships) were assigned Commissioners to enquire of the truth, & certificent Regem ad proximum Parlamentum &c. So are the words of the Record. Where the Attorney challenges not the right by prerogatiue, but only in regard that the place being the demesne Land of the Crowne, & not assigned to any Parish, the Tithes are grantable by the King, as owner, at his pleasure. And so it well agrees both with that liberty challenged by King John in the name of his Baronage, that they might found new Churches at their pleasure in their owne fees (before the establishment of Parochiall right in Tithes) as also with the more ancient practice of the Kingdom, whereby

whereby Tithes might not be parochially exacted, nor were so reputed due, but by the owners arbitrarily conveyed in perpetuall right. And whereas *Herle*, in 7. *Ed.* 3. fol. 5. a. sayes generally, That no man might arbitrarily giue his Tithes that are not within Parochiall Limits, but that the Bishop of the Diocesse should haue them. It seems, he spake suddenly, as out of the Canon Law, and not according to the Law of *England*. And hee addes, that it is against reason, *Que home ne purra my granter ses almoignes a que il vouldra*. And but \* two yeeres before that of *Herle*, it was adiudged in the Kings Bench, *Quod de Decimis grossis Priori de Carleol & predecessoris suis de dominicis Domini Regis infra Forestam de Inglewood prouenientibus & extra quaruncunque Parochiarum Limites existentibus per Cartam progenitorum Domini Regis nunc concessis, & per Cartam ipsius D. R. nunc confirmatis, &c.* a Prohibition should be granted against the Bishop of *Carleol*, that claymed them. It was vpon a Record sent thither out of the Parliament, as in the Roll appeares largely. And *Edward* the first gaue such Tithes of the Forest of *Dene*, as encreased not within any Parish to the Bishop of *Landaff*, by which title the Bishop afterward \* claymed them; and no question was of that point. But for common or waste ground, the Parish whereof is not known, the Statute of 2. *Ed.* 6. hath giuen the Tithe cartell

\* *Mich.* 5. *Ed.* 3.  
Coram Rege  
*Rot.* 168. *Cumiria*.

\* *Rot.* *Parl.* 8. *Ed.* 2.  
*rot.* 17. in *ders*.

tell therein depasturing, to the Church within whose Parish the owner dwelleth.

## CAP. XII.

- I. *Appropriations and Collations of Tithes with Churches. The Corporations to which the Appropriations were made, presented, for the most part, Vicars. Thence the most of perpetuall Vicarages.*
- II. *How Churches and Tithes by Appropriation were anciently conueyed from Lay-Patrons. The vse of Inuestitures, practised by Lay-Patrons.*
- III. *Grants of Rents or Annuities by Patrons only, out of their Churches. Of the Bishops assent. More of Inuestitures. A Writ to the Archdeacon anciently sometime sent vpon reuerie of a Presentment.*
- IV. *Of hæreditarie succession in Churches.*
- V. *Laps vpon default of Presentation grounded vpon the generall Councell of Lateran, held in 25. Hen. 2. What Præsentare ad Ecclesiam is originally. Donatio Ecclesiæ.*

I. **A**S by *Consecrations* feuerally, so, with Churches, in *Appropriations*, Tithes were frequently conueyed, and by expresse name. as *Ecclesia de N. cum Decimis*, or the like, are vsually giuen *Monachis, Monialibus*

A a a

Etc.

*&c. ibidem Deo seruientibus &c.* according to what is before noted of other Countries. But this Mention of Tithes, with Churches in Appropriations, was rare, or not at all, till after the *Normans*. In the *Saxon* times, many appropriated Churches are found, and that from between D. C C. and D. C C C. yeers since, till the *Normans*. but the Charters that conueyed or confirmed them, haue vsually nothing but *Ecclesias* and so many Carues or Yard Lands, or so much rent annext to them, not speaking at all of any Tithes transferd with them. For speciall examples of such ancient Appropriations, you may see the recitalls of the Charters of King *Bertulph*, King *Beored*, and King *Edred*, made to the Abbey of *Crowland*, and inserted in *Ingulphus*. But after the *Normans*, in Appropriations, most commonly, the Church is exprest, *Vna cum Decima* (that is, the Tithe annext or consecrated to it) in *annonæ*, or in other kind, and the places sometimes are named where the encrease of the Tithe grew. Such examples are very obuious, especially in the Chartularies of *Abingdon* and *Rocheſter*. And, as is before noted, the most common intent (allowd also by Canonick confirmation, which sometime but rarely was added in those elder ages) was, that the Corporation whereto the Appropriation was made, should put Clerks or Vicars in the Churches so conueyed to them, which were to answer to them  
for



for all temporall profits, as Tithes and other reuenues (although the Churches were distant many hundred miles sometimes from the Monasteries; for a Church in one Kingdome also was often appropriated to a Monasterie of another) and to the Ordinarie for spirituall function. The generall Confirmations that are sometime found of that time, make it manifest and for the two Prouinces, it is not amisse to adde here these two examples of it. In 17. Will. 1. Thomas Archbishop of York makes a generall Confirmation <sup>a</sup> to the Priorie of *Durham* of all Churches either then appropriated to them, or thereafter to be appropriated, and grants and commands, *Vt omnes Ecclesias suas in manu sua teneant, & quiete eas possideant, & Vicarios suos in eis liberè ponant, qui mihi & successoribus meis de cura tantum intendant animarum, ipsis verò de omnibus cæteris Eleemosynis & Beneficijs.* So, vnder Henry the second, Pope Lucius the third writes to all the Monks in the Prouince <sup>b</sup> of *Canterburie*, and bids them, that in all Churches, in quibus presentationem habetis cum vacauerint Diocesani Episcopi Clericos idoneos presentetis qui illis de spiritualibus, vobis de temporalibus debeant respondere. Where, that in quibus presentationem habetis, can bee vnderstood only of Churches appropriated (which they enioied not pleno iure, that is, <sup>c</sup> in which they were bound to allow some competent reuenue to a Vicar or

<sup>a</sup> Rot. de Houeden, part. 1. fol. 263.  
<sup>b</sup>

<sup>b</sup> Append. ad Concil. Lat. part. 16

<sup>c</sup> Panormitan. ad tit. de res. in integ. cap. audiuit.

Curat, and had not exempt iurisdiction, nor the power of institution of Vicars, without presentation to the Bishop) as is plainly known from what followes touching the answering for the Temporalties to the Monasteries. And in those times, as is already deliuered, it was most frequent, to haue presentations made by Monasteries to their appropriated Churches; and the Vicar-Incumbents or Presentees had no more of the profits (notwithstanding the institution) then the Monasteries would arbitrarily allow them. Neither followd any disappropriation vpon such Presentation, howeuer the later Law be taken otherwise. Nor was there any perpetuall certaintie of profits or reuenues to their Presentees, vntill such time as the Monks, by composition with the Ordinaries, or by their owne Ordinance (which prescription after confirmed) appointed some yeerly salarie in Tithes, or Glebe, or Rent, seuerally for the perpetuall maintenance of the Cure; which Salaries became afterward perpetuall Vicarages. And to these testimonies touching appropriated Churches in those ancient times, and presentation to them, you may also adde that <sup>d</sup> Canon of the Councell of *Westminster*, held in the second of King *Iohn* by *Hubert* Archbishop of *Canterburie*, to the same purpose. wherewith is agreeing also one of *Othobons* Legatine Constitutions, touching filling of Appropriations, and making of Vicarages;

*d. Roger. Henr. 2.  
assuet. 2. fol. 460. b.*

ges; as also the two Statuts of 15. *Rich. 2. cap. 6.* & 4. *Hen. 4. cap. 12.* touching the point of which Statut, a Bill in the next Parliament was again put in, but answered with *« Soient les Statuts ent faitez & gardez.*

*« Rot. Parl. 5.  
Hen. 4. cap. 74.*

II. In those elder Appropriations, it appears that the Church and the Tithes, and what else was ioind with it as part of the assigned reuenue, by the practice of the time passed in point of interest from the Patron by his gift (which oftentimes was by liuerie of a book or a knife on the Altar) not otherwise then freehold conueid by his deed & liuerie. Neither was confirmation or assent of the Ordinarie (as it seems) necessarie as of later time. Obserue this one example of the Church of *Waldren* appropriated to the Priorie of *Lewes* in *Suffex* by *Robert* of *Dene*, wherein he as Patron appoints also the conditions to which the Presentee or Vicar-encumbent of the Priorie should be subiect. *Ego Robertus de Dena* (saies the <sup>f</sup> Deed) *& vxor mea Sibilia pro animab<sup>o</sup> antecessorum nostrorum & pro salute nostra, & successorum nostrorum concedimus Deo & S. Pancratio Latifaquensi Ecclesiam de Waldrena cum terris & Decimis, & omnibus ad eam pertinentibus, & cum duabus partibus Decime bladorum de Caluindona, ita videlicet vt Sacerdos de Waldrena, de his omnibus soluat S. Pancratio singulis annis dimidiam marcam argenti. Ipse autem Sacerdos per manum Prioris S. Pancratij Ecclesiam de Wal-*

*f In Thesauro Col-  
lati.*

*drena tenebit quamdiu castè & religiosè vixerit. Quod si crimen incurrerit, iudicio Prioris Latifac-*  
*quensis corrigetur aut expelletur.* This, about the  
time of Henrie the second, was made *coram duobus Hundredis apud Hundestuph.* Very many other are extant so made, as well by common persons as the King in the *Saxon* times of churches, and since, of Churches and Tithes without any confirmations; sauing sometimes that those of common persons are ratified by the King & as supreme Lord, as also they are too by other Lords. for it was not vnusuall for Tenants to haue their Lords confirme their alienations of all kind of possessions. I know what is said in the later Law of the Kings power as suprem Ordinarie for the part of Iurisdiction, and I acknowledge it, as all ought. but in those elder times, that was not the matter which made appropriations good, where his confirmation had place, and none was from the Bishop. at least it cannot at all be proued that his suprem Iurisdiction spirituall was so much thought of in them, although otherwise apparent testimonie be of the exercise of such iurisdiction and of the right of it in the elder ages in this Kingdome. But the reason of appropriations so practiced by lay Patrons only, was the challenged right which in those times they most commonly vsed in disposition of their Churches, as if they had been all Donatiues by collation (without presentation) that is by Inuestiture from

g. Videfis 7. Ed. 3.  
fol. 4. b. & Esfor. &  
Placit. de 10. Rich.  
1. Rot. 23. Hertf.  
cas. Reginaldi de  
Argentan.

from their own hands only, which gaue their Incumbents reall possession of the Tithe of the Church and all the reuenues, no lesse then presentation, instituti<sup>n</sup>, and induc<sup>ti</sup>on doe at this day. For howeuer, not only the Decrees both of the Pope and generall Councells, were anciently against that kind of inuestiture, but also the Prouinciall or Nationall Synods here held, had like Canons forbidding it, as in 3. Hen. 1. the<sup>h</sup> Councell of *Westminster* held vnder *Anselme* Archbishop of *Canterburie*, & *Girard* of *Torke*, ordains, *Ne Monachi Ecclesias nisi per Episcopos accipiant*, and in 25. Hen. 1. at the same place in the Nationall Synod, held by Cardinall *Iohn de Crema*, the Popes Legat, it was constituted, that<sup>i</sup> *Nullus Abbas, nullus Prior, nullus omnino Monachus, vel Clericus Ecclesiam siue Decimam seu qualibet beneficia Ecclesiastica de dono Laici sine proprij Episcopi autoritate & assensu suscipiat quod si presumptum fuerit, irrita erit donatio huiusmodi &c.* and some allowance was giuen to these Canons by the King; yet it is most certain that the practice was for diuers yeers afterward otherwise, and that Churches with Tithes were most commonly giuen by lay Patrons, without the Bishops assent or institution, and that as well by filling them with Incumbents, as appropriating them to Monasteries, Chapters, or otherwise. Beside the examples that might enough proue it and are obuious in old Charters,

*h* Guil. Malmesb.  
de Gest. Pontific.  
lib. 1. vide *Anselm.*  
lib. 3. Epist. 45.

*i* Conti. uar. Flo-  
rent. Wigorn. ann.  
1125.

k *East. de Inſtit.*  
c. 3. ex frequentibus  
qui Canon ple-  
nius habetur in  
Appendice ad  
Concil. Lat. ran.  
part. 28. cap. 11.

laries, the preamble of a Decretall of *Alexander* the third, ſent, vnder *Henrie* the ſecond, to all the Biſhops of <sup>k</sup> the Prouince of *Canterburie*, is herein full teſtimonic. *Ex frequentibus querelis* (ſaies he) *didicimus in partibus veſtris conſuetudinem prauam à multis retro actis temporibus inualluisse, quod Clerici Ecclesiastica beneficia sine consensu Episcopi Diœceſis vel Officialium ſuorū* (qui hoc de iure poſſunt) *recipiunt minùs quàm deceat, ſollimitè cogitantes, quomodo id à Patrum ſanctorū eſt inſtitutionibus alienum & Ecclesiasticæ contrarium honeſtati.* Vnde cum tu frater &c. where you ſee plainly that courſe of inueſtiture or donation by the Patron without preſentation, was conſuetudo quæ a multis retro actis temporibus inualluerat, which ſhews it to haue been then a part of the ſecular Law; though the iudgment of the Biſhops and the Pope titles it *Praua*. agreeing to this are other teſtimonies in <sup>l</sup> *Gregories* Decretalls, and that in Epiſtles to all the Biſhops of *England* to forbid it. and it is ſpecially obſerueable, how ill the Baronage of *England* tooke it when *Anſelm* vnder *Henrie* the firſt would haue, through Papall Canons, inhibited the practice of inueſtitures, vſed by the King and other lay Patrons, which is recorded in an Epiſtle <sup>m</sup> of that *Anſelm*, directed to Pope *Paschal* the ſecond, thus ſpeaking. Domino Reuerendo & Patri diligendo *Paschali* ſummo Pontifici *Anſelmus* ſeruus Eccleſiæ *Cantuarienſis*, debi-

“ tam

l *Tis. de iure patr.*  
c. 10. mon Laici,  
c. 11. c. 12. Pastoralis  
& c. 21. reſcriptum.  
vide Roger. de Ho-  
miden. Annal. ſol.  
908. a. I. *Sarabur.*  
*Policrat.* lib 7. cap.  
27 & app. ad  
Concil. Lat. part.  
25. cap. 2.

m *Epist. Anselm.*  
Ms. 195. in Bibl.  
Cottoniana.

“ tam subiectionem & orationum assiduitatem.  
 “ Postquam reuocatus ad Episcopatum redij in  
 “ Angliam, ostendi decreta Apostolica quæ in  
 “ Romano Concilio præsens audini ne scilicet  
 “ aliquis de manu Regis aut alicuius Laici Ec-  
 “ clesiarum Inuestituras acciperet, vt pro hoc  
 “ eius homo fieret; nec aliquis hæc transgredi-  
 “ entem consecrare præsumeret. Quod audien-  
 “ tes Rex & Principes eius ipsi etiam Epif-  
 “ copi, & alij minoris ordinis tam grauiter a-  
 “ ceperunt, vt assererent se nullo modo huic rei  
 “ assensum præbituros, & me de regno potius,  
 “ quam hoc seruarent, expulsuros & à *Romana*  
 “ Ecclesia se discessuros; vnde reuerende Pater  
 “ vestrum petij, per Epistolam nostram, consili-  
 “ um &c. This is in the Ms. Volume of Epistles  
 of *Anselm*, fairly written by *Iohn de Grandisono*  
 Bishop of *Excester*, in the yeer M.CCC.LXIV.  
 in which are about C. more then are published  
 in his printed Works. they menaced the Arch-  
 bishop with banishment, and the Pope with re-  
 uolt from his See, only for their withstanding  
 that practice of Inuestiture; whereof, for so much  
 as concernes Abbeies, Priories, or Bishopriques  
 (in giuing them by the ring and baston) much  
 testimonie is in the storie of about that age. and  
 the Kings remission of the Inuestitures of those  
 great dignities is frequent. but, for Parish Chur-  
 ches, of which we here chiefly speake; the com-  
 mon occurrences of Inuestitures mention them



i In Append. ad  
Concil. Lat. part.  
2 cap. 14. tit. de  
sacris legationibus.

but litle. But for the vse of them known also by the name of Institution; see the Fine anon transcribed of 33. Hen. 2. as also specially a commission sent by Pope *Alexander* the third, to the Dean of *Chichester*, touching a Parson that was *legitime institutus* à *Willielmo Nobili viro*, and had resigned *Personatum Capellano Domini*. But this course of Inuestitution by Lay men, after *Anselmes* time, began to bee of lesse vse; and some, obeying the Canons, presented, others still collated by Inuestitution till about *Richard* the first and King *Iohns* time, whereof more in the next Paragraph. To the Lay Patrons challenged right of such Inuestitution of Churches and Tithes, belongs specially the Granting of Rents and such like out of Rectories by the Patrons only, and the Sonnes or others Succession in Parish Churches after the death of their ancestors. of both which (litle known vulgarly) ancient warrant is yet remayning.

III. For the first; in the Chartularie of the Priorie of *S. Needs* in *Huntingdonshire*, one *Robert Fitz-water* (about King *Iohns* time) giues to the Priorie six marks of siluer *nomine certi beneficij in Ecclesia de Wimbisse annuatim percipiendas per manum persone eiusdem Ecclesie. Quare volo* (saies he) *vt quicunque in præfata Ecclesia de Wimbis. ad præsentationem meam vel heredum meorum persona instituta fuerit prænominatis Monachis S. Neoti de supradicto beneficio VI. marcarum*

rum fidelitatem faciat, saluo mihi & heredibus meis iure aduocationis & praesentationis &c. and diuers other such like are. Neither haue I met with a precedent of those times wherein the Encumbent was Grantor, as at this day by the Common Law (the Church being full) I think he must. but most vsually a prouision by the Patron was inserted to this purpose, that the seuerall Encumbents should by Oth bind themselues to the true payment. nor was it so necessarie to haue the ordinaries assent, when that, which the Ordinarie by the practice of the later Law is to do in his Institution, was in frequent practice supplied by the Patrons Inuestiture. Out of which may be the better vnderstood that part of the new Canon in the Synod of *Westminster*, held vnder *Richard* Archbishop of *Canterburie*, in 21. Hen. 2. *Nulli liceat Ecclesiam nomine Dotalitij ad aliquem transferre*, that is, *That no Patron should giue his Church* as it were in *Frankmariage*, or make of it a *Donatio propter nuptias* (as the Ciuilians call it) to remain with the husband of his Daughter or Kinswoman, during his life. How could such a gift haue at all been made by presentation (as of later time it is vnderstood) Institution or Induction? and a most obseruable example of this matter is in a Fine of 33. Hen. 2. in these words. *Hæc est finalis concordia facta in Curia Domini Regis apud Cantuariam anno Regni Regis Henrici secundi XXXIII. die*

k. Roger. Hoved.  
Annal. fol. 310.

“ Veneris proxima post festum sancti Iohannis  
 “ Baptiste Coram *Radulpho* Archidiacono Co-  
 “ secestræ, & *Rogero* filio *Reinfri*, & *Roberto* de  
 “ *Witfeld*, & *Michaele Belet* Iusticiarijs Domi-  
 “ ni Regis, & alijs fidelibus Domini Regis ibi-  
 “ dem tunc presentibus inter Priorem de *Lewes*  
 “ & Monachis eiusdem loci & Willielmum fi-  
 “ lium *Arthuri*, quem *Richardus* de *Budegintun*  
 “ posuit loco suo ad lucrandum vel perdendum  
 “ de aduocatione Ecclesiæ de *Budeketun*, vnde  
 “ placitum erat inter eos in Curia Regis, scilicet  
 “ quod Prior & Monachi remiserunt & quietum  
 “ clamauerunt eidem *Richardo* & hæredibus suis  
 “ aduocationem prædictæ Ecclesiæ per ita quod  
 “ persona quæ per ipsum *Richardum* vel hære-  
 “ des eius in eadem Ecclesia institueretur, reddet  
 “ singulis annis Ecclesiæ de *Lewes* III. solidos  
 “ scilicet ad festum Sancti Michaelis. & ille qui  
 “ in eadem Ecclesia per ipsum *Richardum* vel  
 “ hæredes suos institueretur persona, post institu-  
 “ tionem suam, coram Episcopo fidelitatem  
 “ præstabit quod prædictam pensionem prædi-  
 “ cto termino Ecclesiæ de *Lewes* persoluet, &  
 “ postea in Capitulo de *Lewes* eandem fidelita-  
 “ tem innouabit. Here it appears (it seems)  
 by the iudgement of the Kings Iustices, that the  
 Patron had such interest in those times, that he  
 might alone without grant of the Encumbent  
 (who came in by his Institution and Inuestiture)  
 or confirmation of the Bishop, charge the church

with

with a pension. and this, being in a Fine, is of autoritie beyond exception for that age. But the like is in *Rot. Fin. 7. Rich. 1. Lancast.* in a Fine leuied between *Theobald Fitz-water*, demandant in a Writ of Right of Aduowson against the Abbot of *Shrewsburie*, of the Church of *Kirkham*, where XII. marke Rent is reserued to the Abbot, with a like clause for the Encumbents fealtie for true payment. the like in *Fin. 4. Rich. 1. diuers. Comit.* touching the Church of *Dacheworth*. yet also, in that age, the assent of the Parson and Bishop was somtime had. as in *Rot. Fin. 7. Rich. 1. Staff.* where, vpon Right of Aduowson by the Prior and Canons of *Stanes* against *Alice Hopton*, for the Church of *Cheklegb*, *Alice & Robertus filius & heres suus per assensum & voluntatem H. Couentrensis Episcopi in cuius Diocæsi Ecclesia illa sita est, & Osberti personæ eiusdem Ecclesiæ tunc ibidem præsentium, concesserunt præfatis Priori & Canonicis XX. de eadem Ecclesiâ de Cheklegb annuatim percipiendos sine omni contradictione imperpetuum de Clerico eandem Ecclesiâ possidente quicumque ille fuerit ad duos terminos videlicet ad Pascha X. & ad festum S. Michaelis X. &c.* Here the assent of the Parson and Bishop being both present in Court, is inserted in the Fine; yet inough examples shew that it was not (as may be strongly coniecturd) thought altogether necessârie. But indeed howeuer the right of Inuestitures had, been then much exercised

cised by Lay Patrons, yet in case of Clergie Patrons, if the Church were not of exempted iurisdiction, the Bishops more vsually instituted: and therefore was their assent the sooner admitted somtimes into the Fine; and doubtlesse also some lay Patrons willing enough herein to obey the Canons, after *Anselm* and perhaps before arbitrarily filld their Churches by presentation to the Bishop. this may be collected especially out of that of the grant of the <sup>1</sup> priuilege of Institution in Churches, made by *Turstan* Archbishop of *York* vnder *Henrie* the first, to the Archdeacon of *Richemond*, as also out of two Decretalls from *Rome*, sent by Pope<sup>m</sup> *Lucius* the third, vnder *Henrie* the second to the Bishop of *Normich*. and in some other<sup>n</sup> autoritie both in our yeer books and in the fine Rolls also of the beginning of King *Iohn*, the Bishops assent in such grants of that time is sometimes found. and in that commonly (but without sufficient ground) attributed to *Randol* of<sup>o</sup> *Glanvill* chief Iustice of *England* to *Henrie* the second, the Bishops institution is spoken of as a thing of not vnknown right vpon a recouerie in *Darrain presentment*, according as the Canons require. And in an Epistle<sup>p</sup> of *Giraldus Cambrensis* (written in those times to *Hugh* Bishop of *Lincoln* about his Parsonage of *Cestreton*, which he challenged vpon presentation of himself made by *Gerard* of *Camvill*, a Gentleman of great worth in *Lincolnsbire*) the

1 *Extr. de Instis.*  
c. 6. cum iurisdictione  
Edit. Gregoriana.

in *Extr. tit. de iure  
iurando*, c. 11. tua  
m. 1. Sc. de iure patr.  
c. 24. cui autem.  
n. 10. Ed. 3. tit.  
Annuitie 23. &  
Rot. Fin. 1. Ioh.  
H. m. g. d. n.

o *Lib. 3. cap. 20.*

p *In Symbol. Elic.  
Gorum Ms. in Bib.  
Cotton.*

the Bishops Institution is spoken of, as cleerely necessarie, according to the Canons, and noted with *Episcopus solus honores dare potest*; which, you must remember, was written by one that was feruent for the Canons, and had also written against the *auita consuetudines* or common Laws of that time. But these testimonies must be warily vnderstood, and compared with the former and frequent practice of the contrarie, which about that time, especially vnder *Richard* the first and King *Iohn* (it seems) much altered. Neither till about that time can it be found, that the more common practice of Lay mens Inuestitures ceased. Nor was the Bishops Institution presently and vniformely thence vsed, as of later ages. The autoritie of the Clergie had by that time taken away the vse of Lay mens Inuestitures. Yet was it not cleere, it seemes, vpon the practice that here followed, what dignitie of the Clergie should then exercise the Institution: for you shall find it sometimes done by the Archdeacon, as it was also before *K. Iohn*, in some cases where any Lay man omitted his Inuestiture; as may be gathered out of a Decretall, sent 9 hither from Pope *Alexander* the third, to forbid the Archdeacon of *Ely*, *Curam animarum sine mandato Episcopi committere*. And afterward also, in *Pasch & Trin. 9. & 10. Reg. Iob.* a Writ is awarded to the Archdeacon, as now it ought to the Bishop, vpon recouerie of a Presentment.

The

9 Extr. de offic.  
Archidiacon. c. 4.  
cum sacra & cap. 5.  
Archidiacono.

The entrie is thus. *Recordatum est per G. filium Petri & Simonem de Pateshull quod Simon filius Richardi, tempore Regis Richardi, recuperavit, coram eis & socijs eorum versus Iohannem de Kalceto seisinam Aduocationis Ecclesie de Buckworth (in Huntingdonshire) per assisam de vltima presentatione, ita quod habuit breue quod Archidiaconus admitteret personam ad Ecclesiam illam ad presentationem eidem; & ipse Iohannes impediuit eum ita quod implacitauit eum per breue Papæ, & Dominus Rex prohibuit placitum, & Simon venit & impetrauit à Rege quod loquela procederet, & quod haberet breue ad Archidiaconum de Clerico suo admittendo & habuit. T. domino G. filio Petri & Will. de Briwere.* Here twice was the Writ of Admission or Institution sent to the Archdeacon, not to the Bishop. Perhaps indeed it happened in the vacancie of the See. for the time so falls, that we cannot be sure of the contrarie. But admit it were so. Plainly, the Archdeacon neither by Canon nor common Law had any more right of Institution, by reason of a Vacancie of the Bishopricke. And certainly, during the vacancie, the Writ should<sup>r</sup> goe to the Gardians of the Spiritualltie, which by the Canon Laws, are the Deane<sup>r</sup> and Chapter, but by the Law of *England*<sup>r</sup>, the Archbishops in their seuerall Prouinces, and the Deanes and Chapters only, in case where the Archbishopriques are void. And in other places, somewhat after-

<sup>r</sup> Arg. 15. Ed. 3. tit.  
Quare non admi-  
sit 5. & F. 10.  
N. B. 27. 1. & c.  
f. 8. tit. de Supplend.  
Prælat. neglig. c. 3.  
Ec. 36. Hen. 8. tit.  
Administrators  
46.  
<sup>r</sup> Vide 17. Ed. 3.  
tit. Briefe 8. 22.  
17. Ed. 3. 14. a.  
Regist. Orig. fol. 2.  
c. 141. a. 17. Ed. 3.  
fol. 23. b. & c.



afterward also I haue seen Institutions often <sup>u</sup> by the Archdeacon of *Leicester*, while the Bishopricke of *Lincolne* was void; which shewes, that those times were the infancie of the exact course of Episcopall Institutions, as they are at this day vsed. Neither had these any priuiledge of Institution, as the Archdeacon of *Richmond* had anciently giuen <sup>x</sup> him, or the like. At this day, and from long time before, the Archdeacon only Inducts, as the Books & common practice shew. But thereof thus much by the way.

IV. For that other, of Succession in the Benefices of the Ancestors; doubtlesse, that was, often when the father or other ancestor was Incumbent and Patron, and by that challenged right, of the time, of Inuestiture and sole disposition of the Church, would either in his life time conuey the Benefice to his sonne or heire by grant, which by the practice of the time, supplied, it seemes, as well a Resignation, as Presentation, Institution, and Induction; or would so leaue the Ad-uowson to discend to his heire, that he (being in Orders) might retaine the Church in his owne hands, according as the Law then, it seems, permitted. Against this, was a Canon made in the Nationall Synod at *Westminster* in 3. *Hen. 1.* *Vt filij Presbyterorum non sint hæredes Ecclesiarum Patrum suorum.* And another in 25. *Hen. 1.* held vnder the Popes Legat: *Sancimus* (as the words are) *ne quis Ecclesiam sibi siue Præbendam paterna*

u 5. H. 3. in Ma-  
tricul. Eccles. in  
Archidiacon. Leic.  
in Biblioth. Cot-  
toniana.

x Vide extr. sig. de  
Instit. c. 6. & Reg.  
de Henricis p. 403.  
& 408. & seq.

y Videfis *extr.*  
*tit. de iure Patron.*  
*c. 15. consultius & r.*  
*& tit. de filijs*  
*Presbyt. passim. &*  
*tit. de Passu c. 5.*  
*accepimus. & tit.*  
*de Testibz c. 7. ex*  
*parte. & Appen.*  
*Concil. Lat. part. 8.*  
*cap. 22. Hereford.*  
*Episcopo & Ab-*  
*bati de Forde.*  
*Nec omitas eius-*  
*dem appendicis.*  
*part. 15. cap. 15. &*  
*part. 19. cap. 1. &*  
*part. 18. cap. 4.*  
*& 8. part. 49. cap. 14.*  
*& part. 50. cap. 40.*

*vendicet hereditate ⁊ aut successorem sibi in aliquo Ecclesiastico constituat Beneficio.* Without that challenged right of Inueſtiture supposed in the Incumbent (hauing also the Patronage) which supplied all that the Patron, Bishop, and Archdeacon at this day do in filling a Church, how could any Parson make to himselfe a successor or an heire to haue colour to claim the Incumbencie from his ancestor. To this purpose may be well rememberd a passage in a verdict found in *Rot. Placit. 6. Rich. 1. Rot. 1.* of such a kind of conueyance of S. Peeters Church in Cambridge: the words are; *Iuratores bene sciunt quod quidam Langlinus qui tenuit Ecclesiam illam, & qui fuit persona illius Ecclesie dedit Ecclesiam illam, secundum quod tunc fuit mos Ciuitatis Cantebriegie, cuidam parenti suo Segario nomine qui illam tenuit per LX. annos & plus, & fuit persona illius Ecclesie & ipse postea dedit Ecclesiam illam Henrico filio suo qui illam tenuit per LX. annos & ipse in ligea potestate sua dedit illam Hospitali Cantebriegie per Cartam suam & idem Hospitali habet Ecclesiam illam.* They discreetly find the custome of the Citie to maintaine the Conueyance, supposing (it seems) that the custome would help the last Grantors title, although the Common Law, which had by that time receiued some change herein, by force of the Papall Decrees, should not haue allowd it. I know, in the Canons another thing is also vnderstood in this matter of

of Succession, that is, the irregularitie of the sonne of a Clerk; but that can extend only to the matter of Illegitimation vpon Mariage forbidden to the Clergie. For which point alone, the Bishops refusall had been the best helpe, but that indeed the other kind of disposition of Churches by Inuestiture preuented his refusall when Presentation was not made to him.

V. But after such time as the Decretals and the encreasing authoritie of the Canons, about the yeer M. C C. had setled the vniuersall course here of filling of Churches by Presentation to the Bishop, or (as it seems sometimes it was) to the Archdeacon, or to the Vicar of the Bishop, or Gardian of the Spiritualties; that vse of Inuestitures of Churches and Tithes seuerally or together, practised by Lay men, was left off, and a diuision of Ecclesiasticall & Secular right from thence hath continued in practice. Neither did <sup>z</sup> the King afterward (much lesse common persons) fill their common Parochiall Churches without such presentments from Bishops. Parochiall Churches; for of speciall donatiue Chapels we here speak not. neither were Appropriations of Churches & Tithes afterward allowd, that had not <sup>a</sup> confirmation from the Ordinarie immediat or supreme. And in the same age also came in the Law of the Laps, whereby the Bishop is to collate after six moneths vpon the Patrons default, it being before at his libertie to fill

*z* Vide Rot. par. 9.  
Ioh. R. membr. 1.  
alibi capē in Archieuis, quæ ad illa tempora spectant.

*a* 2. Ed. 3. 23. b.  
3. Ed. 3. fol. 11. b.  
10. Ed. 3. fol. 50. a.  
& vide Casum  
Episcopi Lincoln.  
in Constitutis. 2. &c.

his Church at his pleasure. neither was he confined to any time. That time of Laps was (according as the vse of Presentation grew by degrees settled) receiued into the Laws of *England* out of the generall <sup>b</sup> Councell of *Lateran*, held in 25. *Hen. 2.* vnder *Alexander* the third; to which, foure Bishops (according to the ancient vse of this Kingdom) that is, *Hugh* Bishop of *Durham*, *Iohn* Bishop of *Norwich*, *Robert* Bishop of *Hereford*, and *Reinold* Bishop of *Barb*, were sent as Agents for the Church of *England*. By that Councell, after vacancie of six moneths, the Chapter is to bestow those Churches, which the Bishop, being Patron, had left so long void; and vpon their default, the Metropolitan. but no word is of Lay Patrons in it. Yet by reason of the Autoritie of that Councell, and of a Decretall <sup>c</sup> of the same Pope, which speaks of like time vpon default of Lay Patrons, it hath beene since taken here generally, that after vacancie of six moneths, the next Ordinarie is regularly to collate by Laps. Which perhaps was receiued for a Law, to continue as it hath done, in the Councell or Conuocation at *Pipewell*, held in the first of *Richard* the first, and some ten yeers after that Generall Councell of *Lateran*. For in that of *Pipewell*, the principall thing in hand was the providing for Churches vpon death of their Patrons. *Habitus est* (saith *Ralf de Diceto*, Dean of *Pauls* vnder King *Iohn*) *generalis conuentus iuxta dispo-*

<sup>b</sup> Vide Reg. de  
Houiden, an. 1179.

<sup>c</sup> Extr. de iure  
Patronat. c. 23.  
cap. 12.

*dispositionem Regis & Archiepiscopi XVI. Kal. Octobris apud Pipewell, vt de consilio vacantium per Angliam Ecclesiarum haberetur tractatus.* I know it was for many Churches then void. but it is like enough that according to the generall Councell this Law was then here receiued. but thats only a rousing coniecture, and so I leaue it. and as in the <sup>d</sup> Canon Law the Councell of *Lateran* (which must be vnderstood that of *Alexander* the third) is commonly affirmed for the autoritie of the originall of the right of this Laps in the case of Bishops specially and Chapters, so is it, in ancient monuments of our Laws, also in the case of Lay Patrons. *Ante Concilium Lateranense* (saies <sup>c</sup> Bracton) *nullum currebat tempus contra presentantes.* And in *Placit. de Banco Mich. 3. Ed. 1. Rot. 105. Staff.* The Bishop of *Couentrie* and *Lichfield* pleads a collation by *laps autoritate concilij*, against the *Prior of Landa*, to the Church of *Patingham*. and in the same Plea Rolls of *Pasch. 5. Ed. 1. Rot. 100. Linc.* in a *quare non admist*, by *Alienor*, the Queen Mother, against the Bishop of *Lincoln*, for the Church of *Orkestow*, the six Months and the computation of them (which is there adiudged according to that in <sup>f</sup> *Caresbies* case) is referred to *Concilium Apostolicum*, which can be no other then that of *Lateran*, howeuer the printed Copie of that which we commonly call *Breton* talks of the Councell of *Lions* for the Director

d Extr. tit. de suppl.  
pral. negl. 3. & 4.  
de Conc. prob. 6. 5.  
& 6.

e Lib. 4. rr. de  
Assis. vit. praef.  
cap. 6. §. 3. Vnde,  
si places, Roger, de  
Houed. pars. 2.  
Ann. al. fol. 430. b.  
& Extr. tit. de Offi.  
cio Iudicis ordinari  
c. 4. cum vbi, ante  
Concilium Papa  
Alex. 3. illud vi  
sallor referis, &  
lucum tunc ad. crs.

f Coke Reg. 2.  
pars. 6. 96. 62.

g Chap. 62. des ex-  
ceptions fol. 225.

of the *Laps*, whereas indeed the Mss. haue for *de Lions, de Lautr.* which is doubtlesse for *de Lateran*; yet also in the Rolls of the Common pleas of *Pasch. 9. Ed. 1. Rot. 58. Suthampt.* the Archbishop of *Canterburie* defendant in a *Darrain presentment*, against the Abbot of *Lyra*, pleads that the Church (of *Godesbull*) *est plena ex collatione ipsius Archiepiscopi ratione Concilij Lugdunensis*, and being demanded by what article of the Councell, would not thereto answer, wherupon, after long deliberation, iudgement is giuen for the Abbot. But in the same Plea the Law and custom of *England* for the six months time of *Laps* (which they call there *Consuetudo regni Angliae*) is referd to a Councell; but none is specially named sauing that of *Lions*. But although from Canonically autoritie the *Laps* was thus receiued into our Laws, yet it hath been no otherwise then the Baronage of *England* would permit it. for the Canons otherwise (as at this day they are) giue but foure <sup>b</sup> months to a Lay Patron, and six to an Ecclesiastique, which difference the Law of *England* would neuer permit; as also neither that of the right of collation which the Chapter is to haue vpon default of the Bishop, howeuer the Pope would haue put it here in execution according to the words of the Councell, which you may see in the authorities before noted out of the Text of the Canon Law. and therefore the Law of *Laps* is well referd rather

<sup>b</sup> C. Vices 6. 1.  
de iure patr. in 6.

ther to *Consuetudo Regni Angliæ* (by which title other parts of our \* Laws were often named that were of later beginning) then to the Councell, although thence doubtlesse, as is shewd, it had its originall. But although now, what through the Decretalls and other Canons against Lay mens Inuestitures, what by reason of the Law of Laps, the Patrons former interest or challenged right was much diminished in the Church and the disposition of the reuenues of it (for it followd also that the Ordinaries assent was requisite) yet the *formula* or precedents vsed from ancient time in the recouerie of presentations still retaine, to this day, Characters in them of that Inuestiture. as the *quare impedit*, that is, *Præcipe A. quod iuste &c. permittat B. presentare idoneam personam ad Ecclesiam de N. quæ vacat & ad suam spectat donationem &c.* Where *Donatio* still fauors of the ancient right of Inuestiture; agreeing whereto is that of *Ecclesiam* <sup>k</sup> *concedere*, vsed elswhere in our Law, and attributed to the Lay Patron. Neither doth *presentare ad Ecclesiam* originally denote otherwise then the Patrons sending or placing an Incumbent into the Church, and is made only of *representare*, which in that Councell of *Lateran* and <sup>l</sup> elswher occurs also for *presentare*. *representare* is properly to restore, giue back, or repay, as *reddo* or *repræsto*, whence *presentare* taken in the barbarous times denoted as *dare* or *donare*; so that *idoneam*

i *Regist. orig. fol. 42. b.* inter præd. distinet.

\* Vide 19. Ed. 3. tit. Bricke 243. 18 Ed. 3. fol. 15. b. *Regist. Orig. fol. 98. d.*

k *Glanni lib. 6. cap. 17.* alibi item scilicet in Archi-uis quæ vetustiora *Richardo* primi aut inter *Iohannis* tempora spectant, & vide *Rogier de Howden fol. 425. b.* & *Pars 3. Hen. 3. pars 2. m. 10. b. 2.* l. *Extr. tit. de Co. si- bus c. 11. cum Cle-rici.* & tit. de *Præb. & de c. 21. in La-teranens. S. 2. & tit. de *privileg. c. 3.* & *Hoffm. Summ. tit. de Capellis glo- nachorum, & fo- 1001.**



*idoneam personam ad Ecclesiam presentare* was all one with *idoneam personam ad Ecclesiam dare* or *donare*, or in *Ecclesia constituere*, or *καθίστασαι*, as in the Apostles word is to *Titus*, where he bids him *καταβύλειπες καὶ πόλιν καθίστασαι*, that is, *appoint* or *constitut*, or indeed *present Priests* or *Encumbrants* in *every Ciitie*. for he that there should turn it by *present*, might so keep the proprietie of the word in both tongues, though not as *present* is now restrained. this is iustified out of an old Glossarie that turnes *Represento* by *ἀποκαθίστημι*. for then cleerly *καθίστημι* is *Presento*: while *presentare* so signified also in practice, that is in the time of the vie of Lay Inuestitures, all Churches so giuen were properly *Donatiues*, which attribute hath been since restrained, chiefly to such free-chappels as the Ordinarie had no interest in, but are collated or giuen by the act only of the Patron. and this interpretation of *presentare* is iustified also in out of the *quare impedit* vpon a right of collation (which is but a donation) by the Bishop, wherein the words are also *quod permittat presentare ad Ecclesiam &c.* Donation (which is meerly as Inuestiture in regard of the Bishop) is there called *Presentation*. So also is the Law in the Kings Case and of common persons, being disturbed to collate by Letters Patents to their free Chappels or *Donatiues*. the Writ in those Cases is only *presentare*, which confirms that it denotes Donation or Inuestiture. But in the Counts  
vpon

m Epist. ad Tit.  
cap. i. comm. 5.

n 16. Ed. 3. tit.  
Brisle. 660. F. 2. b.  
Nat. Br. fol. 33.  
B. C. D. E.

vpon such Writs, the speciall matter must be discovered. The like Law is in the Case of him that hath the Nomination of the Clerk. his Writ is also *presentare*, although another haue the right of that which is now known by the bare name of presentation. Nomination indeed or *ννομινησις* being the true and eldest name found in the Laws belonging to the Church, that denote filling or presenting to a Church, in that sense as Presenting is taken for giuing or inuesting. For, in the primitiue times, when the Patron had founded his Church, he nominated whom he would haue receiued into Orders for the seruing of that Cure; and then if the nominated were found worthy hee was receiued into Orders for that purpose, which Ordination turnd afterward into Episcopall institution, as is before declared. that nomination was indeed as Inuestiture or giuing the Church. so is the word vsed in the Laws. and agreeing to them is the purer time of Latin wherein *Nominatio* is for giuing a Place or Office that is void. And as these phrases of the Writs tast of the ancient right challenged by the Patron, so do some assertions in our yeer books of later time; as that of entring into an Aduowson by entring into the Church, of passing an Aduowson by liuerie of seisin at the Church-dore, of the Patrons entring into the place of foundation if the Church cease to remain hallowed, and the like. And to like origi-

D d

nall

o Δι' ἡλξ Νεαπ.

PX.

p Cierro Epist.  
ad Brut. 7.q 18, Ed. 3. fol.  
16. 4.

r 43, Ed. 3, fol. 1. 6.

f 5, Hen. 7.  
37. 4.

1 Vide 19. Ed. 3.  
 20. Quare impedit  
 60.

nall may you referre those of the Kings presentations, which haue *Dedimus & concessimus* in them yet retained, although the force of the words by the later Law, make but only a <sup>1</sup> presentation. But the Law is now settled; neither with vs hath the Patron alone now any prerogative or direct interest in the Church or the reuenues, beside his right of Aduowson or Presentation to the Bishop, by whose institution and the Archdeacons induction euery Church regularly is to be filled. Neither (for ought I haue heard) hath he in our Law any of those *Droits honorifiques*, which the French allow him in Precedence, Seats, and the like. These particulars of Benefices and Aduowsons had here their place, both because in the ancient conueiance of them either by *Inuestiture* to an Incumbent, or by *Appropriation*, the reuenue that was in Tithes passed by expresse words, and that in point of interest from the Patron, as also in regard that, at this day, the Patron of a Parson prohibited by *Indicavit*, to sue in the Spirituall Court for the fourth part of the Tithes of a Church, may haue his *Droit d'auowson de Dismes*. it was requisite therefore to adde these not vulgar or obuious notes of the Aduowsons in this discouerie of the ancient conueiance and interest of Tithes.

## CAP. XIII.

I. *Infeodations bere into Lay hands since the Statuts of Dissolutions. Of Infeodations before that time in England. somewhat more of the originall of Lay mens practice in arbitrarie Consecrations or Infeodations.*

II. *Exemptions or discharges of payment originally by Privileges, Prescriptions, Vnitic, Grants or Compositions, and by the Statuts of Dissolutions.*

I. **F**ROM those arbitrarie Consecrations, and frequent Appropriations of Tithes (whereof we haue hitherto made mention) to Monasteries or other Religious Places, as Colleges of Regulars, Chantries and Free-Chappels, came the present and common Infeodations of them into Lay hands, which began in the age of our Fathers. For, the Portions of Tithes conueied to them out of Closes, parts of Mannors, and whole Demesnies, by the owners, together with the Tithes granted and possessed with appropriated Churches, were first by the Statut of Dissolution of Monasteries in 31. Hen. 8. and by that other of 1. Ed. 6. given to the Crown, and from thence granted to Laymen, whose Posteritie or Assignees to this day hold them with like limitation of estate, as they do other enheritances of Lands or Rents: and,

them, haue like remedie by the Statut of 32. *Hen.* 8. cap. 7. by reall action as *Assise, Dower*, or other originals, as for Lands, Rents, or other Lay possessions by the cōmon Law they might haue. But although in other States these Infeodations or Conuiciances of the perpetuall right of Tithes to Lay men, be very ancient and frequent also; yet no such certain or obuius testimonie of their antiquitie, is in the monuments of *England* as can enough assure vs that they were before the Statut of Dissolutions in any common vse here. But some were, and, for aught appears in the practice of the time, many more might equally haue been. And what scruple was there but that long before the generall dissolution of Monasteries, *Henrie* the fifth might (by the Law of the Kingdom) haue made Infeodations into Lay hands (as *Henrie* the eight did) of all Tithes belonging <sup>a</sup> to the Priors aliens whose possessions were given to him by Parliament he had them serled in the Crown in Fee, and afterward disposed of them to other Ecclesiastique Corporations <sup>b</sup> at his pleasure, no otherwise then of other Lay possessions. By the way, we vnderstand, in these Infeodations, by the name of Lay men, only such as were not either in Orders or professed in Religion. for otherwise all the possessions of Tithes enioied by Nunnes and the like, that were indeed Lay (though not commonly called so) might be comprehended vnder the

<sup>a</sup> *Rot. Parl. 2. Hen. 5. part. 2. art. 9.*

<sup>b</sup> *Vide Cart. 2. Hen. 5. part. 1. Dum. 3. &c.*

the name of Infeodations. But, that some were here; obserue that of *Odo* Bishop of *Bayeux* and Earle of *Kent*, which is before cited out of the liues of the Abbots of *S. Augustines* in *Canterburie*. The words are, *Decimas aliquas quas mei fideles habebant &c.* What can that be, according to the words, other then Tithes that were in the hands of some of his Tenants? You may adde that of *Robert S. Iohn*, cited before out of the Book of *Bosgraue*, where he had, by the gift of his brother *William*, certain Tithes, which he gaue to the Priorie, for maintenance of a fourteenth Monk. And obserue the rest of the Deed there. So out of the Book of *Osney* it appears before, that *Decimatio Nicholai de Stodeham quam Fromundus (Capellanus) tenebat* is granted by *D'Oilly*. Had not *D'Oilly* this from *Stodeham*? Or was *Stodeham* here one of his Bailifes or Fermors, whose Tithe he graunted as Lord or according to couenant with the Lessee? Other such occurre sometimes. And perhaps, *Decime hominū meorum*, & the like granted, may suppose a title possessed in the Tithes by the Lay grantor. And in the same Book of *Osney*, in a Passage written in a hand of about *Hen. 5.* touching the conueyances of Tithes by Lay men to Monasteries, it is related, that he that wrote it, saw *Quendam Rogerum D'Oyly Dominum cuiusdam partis de Bampton in Episcopatu Lincolnensi suis Decimis ita vti, vt nunc vni nunc alteri*

c. In Biblioth.  
Coroniana.

*de suis Valettis ipsas conferret annuatim qui sibi in diuersis officijs ministrabant*, vntill afterward hee erected a Chauntrie with them in the Church of *Bampton*. These Grants to his Valets, plainly were as Infeodations. And what els was in that known case of *Herne* and <sup>d</sup> *Pigot* in *Mich. 39. & 40. Elizab.* but an ancient kind of Infeodation, at least an Inheritance of Tithes from immemoriall time in a Lay man? That, and other like to it, might begin vpon reall compositions, and so the Tithes be deriued out of the Church. But regularly, I thinke, at this day no kind of Infeodation is here allowable in Lay mans making title to a perpetuall right of Tithes (except only by the later Statuts of Dissolutions) vnlesse it either be deriued from some old Graunt of discharge from the Parson, Patron, and Ordinarie, (in which case, hee to whom the Infeodation should be made, could haue it only as a Lay profit issuing out of the discharged land) or ioyned with a Consideration to be giuen for maintenance to the Parson, by him that receiues them; and this either from time immemoriall, or by ancient composition. So I take the meaning of our reuerend Iudges to haue been touching this point. In summe then we may affirme, that some such ancient Infeodations haue been in *England* as in other States; but, that of later time none are allowable (if deriued from <sup>e</sup> other ancient originall, then from the Statuts of Dissolutions) vnlesse

d *Report 2.*  
fol. 45. a.

e *Vide in d. Com-  
mentario, ibid.*



vnlesse they bee anciently deriued out of the Church first by discharge, or appeare to be but as a Reward giuen in pernancie, or as Consideration for a Pension or other competent Maintenance yeerely payable to the Parson. Which withall well stands with the common opinion of the originall of such Infeodations; whereof we haue alreadie <sup>f</sup> spoken. And whereas it hath been resolued, that without these reasons, a Lay man was not here capable, at the common Law, of Tithes by pernancie; it well agrees with a Decretall of <sup>s</sup> *Alexander* the third, which forbids one that married a Parsons sister, to enioy a Tithe giuen him by the Parson, as for the marriage portion, although the Parson were still liuing. But also, that we may not defraud you of any testimonie of former times, that may seeme obseruable touching these Infeodations, whereof so few examples and so little mention is in the Moniments of *England*, take this speciall Disquisition, written in a hand of about *Henrie* the fifth, in the Booke of <sup>b</sup> *Osney*, which would as well giue light to the course of Arbitrarie Consecrations (before largely opened) as to these Infeodations, if it were of sufficient credit. but you shall first haue it compendiously deliuered, and then iudge of it. This title is put to it, *Qualiter Laici ad id priuilegium peruenerint quod locis Religiosis illas (Decimas) conferre possint*. Then sayes he that writes it; he had heard from

f Cap. 6. § 1.

g Extr. sit. de Arbitrio. c. 3. peruenit ad nos.

h In Bibliotheca. Cottoniana.

*de suis Valetis ipsas conferret annuatim qui sibi in diuersis officijs ministrabant*, vntill afterward hee erected a Chauntry with them in the Church of *Bampton*. These Grants to his Valets, plainly were as Infeodations. And what els was in that known case of *Herne* and <sup>d</sup> *Pigot* in *Mich. 39. & 40. Elizab.* but an ancient kind of Infeodation, at least an Inheritance of Tithes from immemoriall time in a Lay man? That, and other like to it, might begin vpon reall compositions, and so the Tithes be deriued out of the Church. But regularly, I thinke, at this day no kind of Infeodation is here allowable in Lay mans making title to a perpetuall right of Tithes (except only by the later Statuts of Dissolutions) vnlesse it either be deriued from some old Graunt of discharge from the Parson, Patron, and Ordinarie, (in which case, hee to whom the Infeodation should be made, could haue it only as a Lay profit issuing out of the discharged land) or ioyned with a Consideration to be giuen for maintenance to the Parson, by him that receiues them; and this either from time immemoriall, or by ancient composition. So I take the meaning of our reuerend Iudges to haue been touching this point. In summe then we may affirme, that some such ancient Infeodations haue been in *England* as in other States; but, that of later time none are allowable (if deriued from <sup>e</sup> other ancient originall, then from the Statuts of Dissolutions) vnlesse

d Report 2.  
fol. 45. d.

e Vide in d. Com-  
mentario, ibid.

vnlesse they bee anciently deriued out of the Church first by discharge, or appeare to be but as a Reward giuen in pernancie, or as Consideration for a Pension or other competent Maintenance yeerely payable to the Parson. Which withall well stands with the common opinion of the originall of such Infeodations; whereof we haue already<sup>e</sup> spoken. And whereas it hath been resolued, that without these reasons, a Lay man was not here capable, at the common Law, of Tithes by pernancie; it well agrees with a Decretall of *Alexander* the third, which forbids one that married a Parsons sister, to enioy a Tithe giuen him by the Parson, as for the marriage portion, although the Parson were still liuing. But also, that we may not defraud you of any testimonie of former times, that may seeme obseruable touching these Infeodations, whereof so few examples and so little mention is in the Moniments of *England*, take this speciall Disquisition, written in a hand of about *Henrie* the fifth, in the Booke of *Osney*, which would as well giue light to the course of Arbitrarie Consecrations (before largely opened) as to these Infeodations, if it were of sufficient credit. but you shall first haue it compendiously deliuered, and then iudge of it. This title is put to it, *Qualiter Laici ad id priuilegium peruenerint quod locis Religiosis illas (Decimas) conferre possint*. Then sayes he that writes it; he had heard from

f Cap. 6. § 4.

g Extr. tit. de Arbitrio. c. 23. peruenit ad nos.

h In Bibliotheca. Customar. c.

from a good Ciuill and Canon Lawier, that had been present at the Disputation of the point, in a case happening between a Religious house and a Parson, for Tithes in the Parsons Parish, who claimed them *iure communi*, that the Aduocat for the Religious house being put to make a speciall title against the Parsons common right, told the Court a long storie of Easterne holy Warres about *Pipins* time; and interposed somewhat of *Charles Martell*; and concluded, that the Pope and the Church euery where graunted, in reward to the Christian Princes, for their Barons, Knights, and Gentlemen, that spent their bloods, labours, and estates in those Warres, the priuiledge of arbitrarie disposition of the Tithes of their lands; by reason of which Graunt, they afterward made not only Arbitrarie Consecrations of them, but also Infeodations into Lay hands, according as the common opinion among the Canonists is too confidently receiued at this day. Then he tells vs that before remeberd, of the Tithes in *Bampton*, and cites some texts out of the Decretalls, that touch Infeodations. Next he relates, that among the Princes of the holy Warre, about *Martell* and *Pipins* time, the Duke of *Normandie* was a speciall one, whence hee had also that priuiledge touching Tithes, *pro se ac suis*, as the words are. And lastly (to bring it into *England*) hee thus concludes, *Et cum Dux Normannie Willielmus ad*  
con-

*conquisitionem Angliæ venisset, quidam Miles eius Robertus d'Oylleye nomine malens suas Decimas Deo commendare quam contra naturalem Ecclesiæ consuetudinem ipsis vii, eas Ecclesiæ S. Georgij quam in Castris Oxenford construxit contulit, Et postea ad Monasterium Osney per Diocesenum & Capitulum Lincoln. ac etiam per Aduocatum Canonici deueniunt.* But it all tastes of nothing but ignorance. For what touches *Martell* and his time generally, enough already is said. And see but what a bold ignorance here was, to tell vs, that the Duke of *Normandie* was one of the greatest (*personis Regum exceptis*, as his Language is) that went in the holy Warre in *succursum Ecclesiæ Romanæ*, in those times of *Pipin* and *Martell*? I would he durst haue told vs also who had then been Duke of *Normandie*. Neither that title of Dignitie, nor that name of the Countrey, were, till about C L. yeers after *Martell*, at all known. The Territorie being then vnder the *French* Kings, who long after gaue it to the *Normans*, and erected it into a Dukedome. Indeed the Duke of *Normandie* had good place in the later holy Warres, about M. X C V. but did not that make this Aduocat say, that the Duke of *Normandie* was a speciall Prince in the other also of *Martell's* time? Such of the later middle times stand not much vpon the mingling of Stories, that differ in themselves euen many whole ages. Besides, he tells vs of strange Princes names of

the East, that made the Warre against the Church. Plainly, the most pretended cause of the rest that erre herein as much as hee doth, is the *Saracenicall* Warre in *Martell's* time, and that out of *Spain*, not from the East. And had it been so vnder *Martell's* time, as it is vsually affirmed; what had that been to *England*? But you see his prouidence for that matter, where he deriues it from the Duke of *Normandie*. But what though there had been some such Duke of *Normandie*, whose Successor had afterward either conquered or enherited *England*? had therefore the old supposed priuiledge of retaining or disposing of Tithes, been thence communicated to his subjects of *England*? and that to the losse of the Church here, that neuer could haue gotten good by the supposed cause of the priuiledge? All the Canon and Ciuill Law that the Aduocat had, could neuer haue proued such a consequent. It will still remaine most probable, if not cleere, that what Infeodations were in *England*, had their originall as well out of the right of arbitrarie disposition of Tithes challenged by the Laitie, without the grant of the Pope or Church, as out of Compositions or Conueyances from the Clergie; according as in other States. For no sufficient Storie, no credible Monument, no Passage, or Testimonie of worth, can iustifie that generall right of retainer or disposition to haue been giuen by the Clergie, or Pope, vpon

upon any cause whatsoever; though the Canons and others that follow them, cry against it, *vsque ad riuum*. The vse of Infeodations, before those later holy Warres, we haue alreadie shewd. And that no vse of them could be about *Martell's* time, is not lesse apparant, by what is also before deliuered. But beside this blind testimonie of the ground of Consecrations or Infeodations; for *England* especially, you may take that (as it is) also of *Lindwood*, who thus speaks touching the Portions which Religious houses had. *Hæ Portiones* (saith he) *potuerunt peruenisse ad locum Religiosum de concessione etiam Laici cum solius Diocesani consensu de Decimis vel prouentibus quas Laicus talis ab Ecclesia alia habuit in feudum ab antiquo*, according to that in *tit. de his que fiunt à Prælati sine ass. cap. c. cum Apostolica*. And hee addes, that this is only true, if those Tithes were infeodated before that Councell of *Lateran* of M.C.LXXIX. And then concludes with, *Nam ante illud Concilium bene potuerunt Laici Decimas in feudum retinere & eas alteri Ecclesiæ vel Monasterio dare. Non tamen post tempus dicti Concilij*. For his interpretation of the Councell, enough before, towards the ends of the VI. and X. Chapters. But doth not *Lindwood* here suppose ancient Infeodations of Tithes (at least created by Churchmen) in *England*? Doth he not thence fetch the originall of Portions belonging to Religious houses in *England*?

i Tit. de locato & conducto c. licet bona verò portiones



commonly, though he writ as a Canonist, yet he addes the speciall custom of *England* if he speak of any Canon Law, which he thinks had not place here. but he excepts not *England* in this, but implies it. therefore doubtlesse, he supposed a common vse of ancient Infeodations among our Ancestors. but I doubt he had not better ground for it then what he found in others of his profession, that had rememberd the frequent vse of Infeodations in other States before that Councell. and he so applied it equally to his own Countrie, and with them takes the Infeodations to haue had originall only from the Grants of Church-men. therefore I value his testimony here but as of a common Canonist, and not sufficient to satisfie vs touching our owne Countrie: neither in his age were the particulars of practice of the time before that *Lateran* Councell, or of the time of creation of Infeodations in other places, enough known among Lawyers. I adde only one note out of *Bracton* that may touch Tithes infeodated or turnd anciently here into Lay fee, and conclude this matter. He speaking of Land demised and recouered by the Legatarie, tells vs some opinion was of his time, that such Land after the recouerie *iterum incipit esse Laicum feodum & non ante; quod non erit de Decimis, cum semel efficiantur Laicum feodum; nunquam reincipient esse Decimæ, & hæc vera sunt secundum R. & alios.* Did not he here suppose

*h. Lab. 5. tra. 8. de  
Exceptionibus cap.  
32. fol. 411. l.*

suppose Lay infeodations of Tithes in *England*? let the Reader iudge. By the way, I note, that passage is corrupted in the print. the beginning is *Item* for *Iterum*, and that *R. & alios* (which I think stands for *Roger de Thurkelby* a great Iudge of that time) is *Biasos*. but according to my Ms. *Bracton*, I haue thus alterd it. You may consider also if some Infeodations came not our of Lay mens enioying of whole Churches with their possessions about the *Norman Conquest*. it is frequent in *Domesday*, to find that such a Layman *tenet Ecclesiam* of such a place, and sold it to such a one. and in the claimes of *Torkeshire* there, the Entrie is *super Ecclesiam S. Marie de Moselege habet Rex medietatem eleemosynæ festorum S. Marie quæ iacet ad Wackefeld. Omne aliud habet Ilbertus & Presbyter qui Ecclesiæ seruit &c.* Where Tithes were. in that time annex by cōtinuance of payment or Consecration to Churches, perhaps they might in like manner as these Offerings or whole Churches, come into the Lay hands. but I leaue this to the iudgement of my Reader. And hereof thus much.

I I. Now for *Exemptions* or discharge from payment; we haue anciently had them here, and still retain some of them in the practiced Law. and that originally either by Priuileges, Prescription, or Grants and Compositions and Vntie of possession. The *Priuileges* haue been either such as were specially allowd and limited to

the Orders of the *Templars*, *Hospitallars*, and *Cisterciens* by the Generall Councell of *Lateran*, held in 17. of King *Iohn* (of which more particular narration is before made) or by new Bulls for the discharge of this or that Monasterie or Order, at the Popes pleasure. By reason of the first kind of priuilege, those three Orders held their Lands discharged of payment so long as they manured them in their own occupation. at least all such Lands as they had purchased before the Generall Councell. and by the second kind sometimes whole Orders were discharged, as for example, that Bull to the *Præmonstratenses* in general giuen by Pope *Innocent* the third, grants them that of their own culture or other improuments they should pay none. Sometimes speciall Monasteries; as in that of the same Pope to the *m* Abbey of *Chertsey*. *De noualibus verò quæ proprijs manibus aut sumptibus colitis, aut de vestrorum animalium nutrimentis, siue de hortis & virgultis, aut piscationibus vestris, nullus à vobis Decimas exigere, vel extorquere præsumat, sed eas elemosynæ aut pauperibus Monasterij vestri, iuxta quod tu fili Abbas postulasti à nobis, præcepimus assignari.* What force by the common Laws of this Kingdom, such a Papall priuilege in ancient time alone had, I abstain here to dispute. and although other examples enough might out of originalls be brought of the like, yet I touch not any of them neither, lest vnawares I might giue  
occa-

l *Innoc. 3. in Epist.*  
*Decret. lib. 8. pag.*  
202.

m *Ibid. lib. 3. pag.*  
410. Videfis Extr.  
219. de Decimis c. 3.  
Ex multiplici.

occasion of some priuat controuerſie. But they had their force in the Canon Law here, and being ſo allowd in allegations againſt Libels for Tithes, were ſtrengthened alſo at length (eſpecially thoſe which were of the ancienteſt) with preſcription of time, in ſo much that from them originally diuers Lands of diſſolued Monaſteries remain to this day diſcharged of payment. But in 2.*Hen. 4. cap. 4.* an Act of Parliament is made againſt thoſe of the *Ciſtercians* here, which purchaſed Bulls of Exemption for their demifed Lands. and thoſe of the Order and others putting ſuch Bulls in execution are made thereby ſubieſt to the puniſhment, containd in the Statut of 13.*Rich. 2.* of *Premunire*. Discharges by immemoriall *Preſcription* of paying no Tithes (of things commonly and of their nature titheable) nor any thing in lieu of them, are by the latter common Law (ſince their Parochiall right eſtabliſhed about the time of King *Iohn*) allowd only <sup>a</sup> to ſpirituall perſons, but to no Lay man. The Laitie being ſince that time held incapable of Tithes both by pernanſie (ſaving in ſuch a ſpeciall caſe where continuall conſideration was given to the Church, as in that Caſe before of *Herne* and *Pigot*) in their own right, as alſo by diſcharge vpon bare preſcription alone, ſaving only in Caſes within the Statuts of Diſſolution of 31.*Hen. 8.* and 1.*Ed. 6.* and the Statut of 31.*Hen. 8.* that warrants common Infeodations

n *Dever. Rippart.*  
2. fol. 44. & *Firth.*  
Nat. Br. fol. 41. B.

ons of them. and so is the practised Law of this day. For, by those Statuts, lay Patentees of lands or Tithes haue like priuilege of discharge and title as the spirituall persons, whose Corporations were by them dissolued, before the dissolution enioied. Of the *Hospitals* dissolued in 32. Hen. 8. I purposely abstain to speak. To this of Prescription, may be added that of Vnitie of Possession. For if any Religious house dissolued in 31 Hen. 8. held the Rectorie of Dale & Lands in the Parish immemorially paying no Tithes, this Vnitie discharges also the Patentees at this day, in such sort as the Monasteries were discharged. But by Compositions and Grants euery man, as well Lay as Spirituall, by the common Law (before the Statut of 13. of *Elizabeth*, made against Leases and Grants of Parsons) might be discharged of Tithes; as if the Parson Patron and Ordinarie ioind in it to the Parishioner either for consideration continuing (as in reall<sup>o</sup> Composition) or for other arbitrarie causes not appearing to posteritie as. in Grants by all three, or rather in Grants by the Parson, and Confirmations by the Patron & Ordinarie. And it is provided by the Statut of 2. Ed. 6. cap. 13. that no person shall be sued or otherwise compelled to yeeld, giue, or pay any manner of Tithes for any Mannors, Lands, Tenements, or Hereditaments which by the Lawes and Statuts of this Realm, or by any Priuilege or Prescription are not chargeable

o Reg. Orig. fol.  
38. b. Fitzg. ubi  
supra.

able with the payment of any such Tithes, or that  
 be discharged by any Composition reall. But al-  
 though a Lay man may not be discharged of a  
 payment by meer Prescription (vlesse he begin  
 the Prescription in a Spirituall person) yet for  
 diminishing the *Quota* in payment only of a lesse  
 then the Tenth, he may prescribe, that is, *De*  
*modo decimandi*. and to that purpose an imme-  
 moriall custome of a whole Town or Mannor  
 holds place at this day. So was the Law an-  
 ciently also. Beside these discharges, some may  
 here expect that part of our Laws, which with vs  
 (as the *Philippine* in *France*, and the *Carolines* in  
*Spain*) discharge some things from payment of  
 Tithes; and seem to permit some customs *de non*  
*Decimando*. But for that matter, so much as vp-  
 on consideration was thought fit to be sparingly  
 said of it, is referd to the passages in the next  
 Chapter, that touches ancient prohibitions *de*  
*non Decimando*. Neither indeed doth that part  
 of our *English* customs belong to the title of  
 Exemption or Discharge. for Exemption and  
 Discharge are properly singular rights to this or  
 that person or Land, and against the currant of  
 the practised Law. but those things touching  
 which any such prohibitions *de non &c.* by our  
 Law should be granted, are supposed generally  
 according to the reasons and practice of the  
 Laws of *England*, of their own nature, not tithe-  
 able. So that not so much a discharge is found in

p. Vide lib. I. tit. 1.  
 non tit. Prohibition  
 §. 6. & Rep. 2.  
 part. fol. 44.

q. 3. Ed. 4. Gl. 14.

that course as a preuention of an vnlawfull charge which the Canons would lay vpon that which the Laws of the Kingdom account not at all in its own nature chargeable. But thereof somewhat more anon.

## C A P. XIV.

- I. *The iurisdiction of Ecclesiastique causes, in the Saxon times, exercised by the Shriue and the Bishop in the Countie Court. and among them that of Tithes also was then to haue been there determind. The Bishops Consistorie seuered from the Countie Court by William the first.*
- II. *After the Normans, Originall suits for Tithes, were aswell in the Temporall Courts as in the Spirituall. and that continued till Henric the second or about King Iohn.*
- III. *Of the time since about King Iohn or Henric the second. Of the Indicauit and the Writ of right of Aduowson of Tithes. What the Law was in an Indicauit before that Statute of Westm. 2. A touch of ancient Prohibitions, De non Decimando.*
- IV. *Writs of Scire facias for Tithes. Enquests taken vpon Commission to enquire of the right of Tithes.*
- V. *Fines leuied of Tithes (in the time of Richard the first, of King Iohn, and Henric the third) vpon Writs of right of Aduowson.*



V I. Scire facias by the Patentees against the  
 pernor of Tithes granted by the King.

V II. Command of paiement by the Kings Writ.  
 And of Tithes in Forests. Triall of the right of  
 Tubes incident in some issues.

**A**S a corollarie to the former parts that di-  
 rectly concerne the *payment* or *consecra-*  
*tion of Tubes*, we thought fit to adde here  
 in the Conclusion of the Treatise, the *Historie*  
*also* (but only the *Historie*) of the *iurisdiction of*  
*Tubes* in this Kingdōm. It is cleer by the pra-  
 cticed cōmon Law, both of this day as also of the  
 ancientest times that we haue in our yeer books,  
 that regularly the iurisdiction of spiritual Tithes  
 (that is, of the direct and originall question of  
 their right) belongs, I thinke as in all other  
 States of Christendom, properly to the Ecclesia-  
 sticall Court. and the later Statuts that haue gi-  
 uen remedie for Tithes infeodated from the  
 Crown after the Dissolution, leaue also the an-  
 cient right of Iurisdiction of Tithes to the Ec-  
 clesiastique Courts. But how the difference of  
 Ages hath herein bin amongst vs, is litle enough  
 known euen to them which see more then vul-  
 garly. In declaration thereof, we shall aptly de-  
 uide the time tripartitly; into that of the *Sax-*  
*ons*; that from the *Normans* till about *Henrie*  
 the second; and what intercedes from thence  
 till this day.

I. In the *Saxon* times a iurisdiction of Ecclesiastique causes (among which you may reckon that of Tithes, although not much signe of it, in exacting payment of them, appears in the moniments of that age) was exercised jointly by the \* Bishop of the Diocese, and by the Shriife or Alderman of the reingemot, or Hundred, or Countie Court, where they both sate, the one to giue Godey right, the other for populer right, that is, the one to iudge according to the Laws of the Kingdom, the other to direct according to Diuinitie. and in the Laws made for Tithes by *K. Edgar* and *K. Knout*, you see vpon default of paiment it is ordaind, that the Bishop and the Kings Bailife, or Shirife, with the Bailife of the Lord of the Land, should see that iust restitution should be made. particulars of the exercise of this kind of iurisdiction, I haue not seen. But at the *Norman* Conquest, this kind of holding Ecclesiastique pleas in the Hundred or Countie Court, was taken away. Remember that as at this day most of the Pleas Ecclesiastique are in the Ordinaries Court within the Diocese, so most suits in the secular or common Law were Viscontiel and held in the Countie or Hundred Court of the Shriife in those ancients times, which may best be obserued out of one of the books of *Ely* \* the most especiall moniment that is extant, for the holding of Pleas in the *Saxon* times. That alteration at the

*Norman*

a Videbis *Leg. E.*  
*shelstans apud*  
*Fox. in Ecclesi.*  
*Hist. lib. 3. pag. 135.*  
*cal. 1. Hinc de-*  
*bent Episcopi*  
*&c.*

b In *Biblioth.*  
*Coroniana.*

Norman Conquest, was by a Law made by the Conqueror, and directed to all Tenants in the Diocese of *Remy*, that was first Bishop of *Lincoln* whither his See was then translated from *Dorebester*. and although it be sent in the direction by name to them only, yet, it seems, it grew afterward to be a generall Law, no otherwise then the Statut of *Circumspecte agatis*, that hath speciall reference only to the Bishop of *Norwich*. The words of it as they are recor-

ded, are, Sciatis vos omnes & cæteri mei fideles, qui in *Anglia* manent, quod Episcopales leges, quæ non benè secundum sanctorum Canonum præcepta, vsque ad mea tempora in regno *Anglorum* fuerunt, communi Consilio Archiepiscoporum meorum & cæterorum Episcoporum & Abbatum, & omnium Principum Regni mei emendandas iudicaui. Propterea mando, & Regiâ autoritate præcipio, vt nullus Episcopus vel Archidiaconus de legibus Episcopalibus amplius in *Hundredet* placita teneant, nec causam quæ ad regimen animarum pertinet, ad iudicium secularium hominum adducant, sed quicunque secundum Episcopales leges, de quacunque causa, vel culpa interpellatus fuerit, ad locum quem ad hoc Episcopus elegerit & nominauerit, veniat, ibique de causa sua respondeat, & non secundum *Hundredet*, sed secundum Canones & Episcopales leges rectum Deo, &

c. In Rot. Inflex.  
Chart. 2. Rich. 2.  
pro dec. & cap.  
Lincoln. membran.  
11. Idem est  
quod habetur Ang-  
licè apud Foxum  
Hist. Ecclesiæ. An-  
glie. lib. 4. pag. 154.  
col. 2.

“ Episcopo suo faciat. Which I the rather transcribe here, because also it seems, to giue the originall of the Bishops Consistorie, as it fits with vs, diuided from the Hundred or Countie-Court, wherewith, in the *Saxon* time, it was ioyned. And in the same Law of his, is further added, *Hoc etiam defendo vt nullus Laicus homo de legibus quæ ad Episcopum pertinent se intro-mittat &c.*

II. Afterward, vnder the succeeding Princes, till about *Henrie* the second, it seemes, that the Iurisdiction of Tithes was exercised in both Courts, as well Secular as Spirituall, and that by originall suit; not only in the one by the first instance (as regularly the later common Law would haue it) and in the other by Prohibition only. I know, little proof will serue most men to iustifie, that the Spirituall Court had then a Iurisdiction of them. but also some testimonie I haue seen of a particular recouerie of Tithes in the Bishops Court in that age. The Monks of *Northampton*, vnder <sup>d</sup> King *Stephen*, recouered two parts of the Tithes of the demesnes of *Wullaueston* against *Anselm de Cochis*, before *Robert* Bishop of *Lincoln*, as Ordinarie. *In plenaria Synodo coram Roberto Lincolnienſi Episcopo disrationauerunt*, as the words are in a sealed Charter of *Simon* the second, Earle of *Northampton*, then liuing; wherein hee testifies both the recouerie, as also *Anselme's* confirmation of the same two parts, accor-

<sup>d</sup> *Charra Simonis*  
*Comitis North*, in  
*Theſaur. Cotton.*

according to the recouerie, and addes also of his own *volo & præcipio vt illam Eleemosynam habeant & teneant liberam & quietam*. And to this you may adde the Appeales to *Rome* from the Audience of the Archbishop of *Canterburie* and other Ecclesiastique Cónsians touching<sup>e</sup> Tithes, that are (as the ancientest Precedents of any such Ecclesiastique proceeding in *England*) remaining among the Epistles of *Iohn of Salisburie*, a great fauorite of *Thomas Becket* Archbishop of *Canterburie* in the beginning of *Henrie* the second. In one of them it is obseruable by the way<sup>f</sup>, that one *Richard*, the Tenant of Land lying within the Parish of *Lenbam*, being sued in the Audience by *Andrew* the Rector for his Tithes, alledges in Court, *Sibi a nobili viro Wilhelmo fratre Regis, Domino suo, esse prohibitum, ne, eo absente, super Decimis de quibus agebatur, causam ingrederetur*. Yet the Court ceased not therefore to proceed; but Sentence being readie to be giuen for the Rector, the Cause was sent to *Rome*, vpon the defendants Appeale. And although the 3 title were only vpon the Grant of him that arbitrarily consecrated, yet was it sometime determined in the Spirituall Court. But also that in this elder age before about the time of *Henrie* the second, the Kings secular Courts of Iustice originally held plea of the right of Tithes, is as plain by infallible prooffe of ancient Moniments. To begin with the eldest times of this

e. *I. Sarisbur. epist.*  
21. 84. 92. 109. &  
133.

f. *Idem Epist.* 109.

g. *Appellat ad Cam-*  
*erol. Lateran. pars.*  
47. cap. 5.

1. Chart. antiq.  
Ed. 1. m. 4. rec.  
Londra.

this part of our Diuision; there remaines<sup>h</sup> yet recorded a Plea held *apud Fulcardi montem*, vnder *William* the second, betweene the Monks of *Salmur* and *Philip de Braiosa*; wherein, the Monks claiming against him and the Abbey of *Fischamp* (in *Normandie*) *Parochiam qua ad Sanctum Cuthmannum pertinet de Castello de Staninges* (these are in *England*, I thinke in *Sussex*) *de Bedingas, & de Bedelingtona*; by the testimonie of *Robert Earle of Mellent*, a Iudgement of the Conquerors time is cited, by which the Abbey of *Fischamp* had the Parish of *S. Cuthmann* adiudged to it in the Kings Court. And thereupon (it being denied by none) it was now again adiudged, that the Monks of *Salmur* should restore whatsoeuer they had taken post mortem Regis in *Decimis & Sepulchris & Offrendis &c.* to the Church of *Fischamp*. And while some delay was in the execution, the King sent his Writ *ad Iusticiarios suos de Anglia*, that is, to *Ralf Bishop of Chichester*, *Randoll* his Chaplaine, *Hamon* his Sewer, and *Vrso de Abetor*, whereby hee commanded, *Vt facerent Ecclesiam S. Trinitatis* (that is, of *Fischamp*) *habere totam Parochiam S. Cuthmanni & Decimas & Corpora & omnes Custumas tam de viuis quam de mortuis sicut pertinebant ad prædictam Ecclesiam S. Cuthmanni antequam Willielmus de Braiosa haberet Castellum de Bembra* (*Bramber Castle*, in *Sussex*, giuen by *William* the first to *William de Braiosa*)

*Braioſa*) & quicquid de ſupradictis cuſtumis Monachi de Salmur ceperint reddi. The right of Tithes and Offerings appeares here plainly to haue been determined in the Temporall Court by two Iudgements, the one vnder the Conqueror, the other vnder his ſonne *William*. And it is found vpon record, that about <sup>i</sup> 10. Hen. 1. a Writ was ſent to *Manaſſes Arſic*, out of whoſe Lands, diuers Tithes were conueyed into the Monasterie of *Fiſcham*, commanding him, *Quatenus Decimas a parentibus ſuis inuolabili iure conſeſſas & datas Fiſcamenſi Eccleſiæ, Monachos ſuos apud Coges degentes omnes in pace & quiete habere faciat; ſi non, Iuſtitia Regis facerent*. Whereupon he ſends his Precept to all his Tenants of ſuch Lands, commanding them to make payment. *Si quis autem aliter* (ſaith he) *facere præſumpſerit Regis iræ & noſtræ pœnam ſine dubio patietur*. So among the Liberties of Saint Iohn of Beuerley<sup>k</sup>, this Writ is found of Henric the firſt. Henricus Rex Anglorum Osberto Vicecomiti de Eboraco & Geraldo de Brideſala ſalutem. Præcipio vobis, vt faciat habere Eccleſiæ Sancti Iohannis de Beuerlaco, Decimas ſuas ſicut vnquam melius habuit, in tempore Regis Edwardi & patris mei, de illis videlicet terris omnibus de quibus homines Comitatus Eboraci testimoni- um portabunt quod eas habere debent. Et quicumque detinuerit, ſciatis quod ego volo

<sup>i</sup> Chart. antiq. ib.  
S. 7. vide ſupr.  
cap. 8. §. 17.

<sup>k</sup> Ms. In Biblioth.  
Cantabrigia.



“ vt rectum faciat Deo & S. Iohanni & mihi.  
 “ T. Ran. Cancellario, & Comite de Meller, a-  
 “ pud Londonias, &c. What is this else then  
 a kind of *Iusficies* to the Shirife of *Yorkeſhire*,  
 for the right of Tithes determinable by the  
 Countrie? Doth not *homines Comitatus Eboraci*  
 denote as much? Of the ſame time alſo, in a <sup>1</sup> Vo-  
 lume of Conſtitutions & other things belonging  
 “ to the Church of *York*: Henricus Rex An-  
 “ glorum *Osberto* Vicecomiti de *Eboraco* ſalu-  
 “ tem. Mando tibi & præcipio vt Archiepiſco-  
 “ pum *Girardum* permittas & facias honorificè  
 “ tenere Eccleſias meorum propriorum Mane-  
 “ riorum quas S. *Petro* & eidem dedi cum om-  
 “ nibus Capellis ſuis, & cum omnibus Decimis  
 “ ſuis, & cum omnibus terris ſuis, videlicet Ec-  
 “ cleſiam de *Bokelinton*, & de *Driffeild*, & de  
 “ *Killum*, & de *Pickering*, & de *Burgo*. *Waltero*  
 “ & *Euremaro* Miniſtris de *Driffeild* præcipio  
 “ vt Decimas de hoc præterito Auguſto, quas  
 “ non reddiderunt, plenariè reddant ſicut Ec-  
 “ cleſia eas iuſtè habere debet & ſicut vnquam  
 “ eas melius habuit tempore patris mei ſive meo  
 “ antequam eas dediſſem S. *Petro*, & videant ne  
 “ ampliùs inde clamorem audiam. ſi quis inde  
 “ iniuriam fecerit Archiepiſcopo, tibi, *Osberte*  
 “ Vicecomes, præcipio vt plenariam reſtituti-  
 “ nem inde facias. Teſte *Rogero* Epifcopo *Sa-*  
 “ *risburienſe* apud *Weſtmonaſterium* in Natali  
 “ Domini. And another is there, in theſe words:

Hen-

" Henricus Rex Anglorum *Ansch.* Vicecomiti  
 " & omnibus Præpositis & Ministris suis de  
 " *Driffeld*, & de *Pokelinton*, & de *Killum*, & de  
 " *Pikering*, & de *Burt*, salutem. Volo & præci-  
 " pio quod faciatis habere *Hugoni* Decano &  
 " Clericis suis benè & plenariè omnes rectas  
 " Decimas de Dominijs meis in omnibus rebus  
 " per hæc prædicta Maneria mea & de omnibus  
 " Parochianis, qui ad Ecclesias horum prædi-  
 " ctorum Maneriorum meorum pertinent. Si-  
 " militè facite ei habere benè & plenariè &  
 " Decimas & omnia iura prædictarum Ecclesia-  
 " rum in terris & capellis. Quia pro salute ani-  
 " mæ meæ & omnium antecessorum meorum  
 " beato *Petro* eas concessi in Eleemosynam. No-  
 " lo autem quod pro recti penuriâ quicquam  
 " perdant quod iustè habere debent. T. apud  
 " *Eborum*. And about 6. Hen. 2. when *Turstin*  
*Fitz-Simon* vsurpt the Tithes of *Mercham*, be-  
 " longing to the Abbey of *Abingdon*, one of the  
 " Monks were sent ouer to the King into *France*,  
 " *Vt per eius iussitiam & auctoritatem* (as my<sup>m</sup> Au-  
 " tor saies) *rectum suum Ecclesie sue restitueretur.*  
 " *Quod & ita factum est.* Rediens enim frater qui  
 " missus fuerat breue à Rege transmissum in hæc ver-  
 " ba reportauit. Then the writ followes, directed  
 " from *Tours* to the Shirife of *Barkshire*. Hen-  
 " ricus Rex *Anglie* & Dux *Normannie* & *Aqui-*  
 " *tania* & Comes *Andegauia*, Vicecomiti suo &  
 " ministris suis de *Berchesira* salutem. Si Eccle-

m. Calicis. Abinda-  
 aepsi Ms. Bibl.  
 Cotton.

" fia de *Abbendona* habuit Decimam de *Mer-*  
 " *cham* ad luminare Ecclesiæ tempore *Henrici*  
 " Regis aui mei & anno & die quo fuit mortuus  
 " & viuus & post, & inde sit disseisita iniuste &  
 " sine iudicio, tunc præcipio quod sine dilatione  
 " inde eam resaisiatis, Et ita benè & in pace &  
 " liberè & iuste tenere faciatis sicut melius &  
 " liberiùs tenuit tempore *Henrici* Regis aui mei.  
 " Et præcipio quod quando *Turfinus* filius *Si-*  
 " *monis* redierit in Anglia, quod Abbas *Abben-*  
 " *donia* plenum rectum habeat de terra quam  
 " prædictus *Turfinus* filius S. tenet de feudo  
 " Abbatia. Et si Abbas poterit distracionare  
 " quod non defecerit de recto prædicto T. in  
 " Curia sua, Abbas inde ei in Curia sua rectum  
 " teneat. T. Magistro *Iohanne* de *Oxenford* a-  
 " pud *Turonem*. The Shirife, by vertue of this  
 Writ, vpon enquire of the point of it in his  
 Countie-Court, restored the Abbey to the pos-  
 session of those Tithes. The words of the Booke  
 " are, Cum verò per lectum esset Regis breue in  
 " pleno Comitatu & manifestè compertum to-  
 " tius Comitatus testimonio <sup>a</sup> quoniam præfata  
 " Decima ad luminare Altaris S. *Mariae* perti-  
 " neret, & quod eam *Turfinus* iniuste tenebat,  
 " Vicecomes ex parte Regis illum dissaisiavit,  
 " & eam Altari cui adiacebat restituit. What  
 can be plainer, then that in those times (if these  
 examples haue credit, as indeed they cannot iust-  
 ly be impeached) the Temporall Courts held Iu-  
 risdiction

<sup>a</sup> L. quòd.

risdiction of Tithes in point of right; and not only the Spirituall. and to confirm it, we adde also the autoritie of *Iohn of Sarisburie* ° that then liud. he in an Epistle to the Bishop of *Excester* relating some of those Positions of the common Laws, or the *Auit & consuetudines* (as they called them) which *Thomas* Archbishop of *Canterburie* about 12. of *Hen. 2.* so much withstood, mentions one to be *Quod Laici, siue Rex, siue alius, causas de Ecclesijs & Decimis tractent.* which well agrees with the authorities before cited. But this was vterly disallowd then by the Pontificall Laws, as, beside the autoritie of the common Canons, may be seen in an Epistle of *Alexander* the third, to the Bishop of *Excester* and the Dean of *Chichester*, wherein it appears, that one *William* a Clerk of *Chichester* had appealed to the Pope about Tithes, the suit being twixt him and the Parson of *Curket*. and the Parson had on the other side appealed *Ad audientiam Domini Regis.* whereupon saies the Pope, *Quoniam nemini liceat super rebus spiritualibus ad secularem Iudicem appellare,* they should enquire of the matter, deprive the Parson, and send him to *Rome.*

o Epist. 139.

p App. ad Const.  
Lancan. part. 10.  
cap. 26.

III. The frequencie of such originall suits for Tithes, in the temporall Courts (through the Canons and the power of the Pope increasing, and growing more dreadfull to *Henrie* the second, and King *Iohn*) became about their times

to be, it seems, more out of vse, and possessed rather by Ecclesiastique iurisdiction. Neuertheless in the sundrie ages since, the determination of the right and payment of Tithes hath been subiect to the temporall Courts, by diuers kinds of originall proceeding, which for orders sake may be all comprehended in these Five. I. By *Prohibitions* touching the *modus* or Customs of Tithing, or other matter concerning the Kings right, triable only in his own Court, or the like. II. The Writ of *Right of Aduowson* of Tithes, wherto you must annex the writ of *Indicauit*, that is but a speciall prohibition making way for the Writ of Right of Aduowson. III. By *Scire facias*. IV. By bare processe of command of payment. V. By the actions vpon the late Statuts of 32. *Hen. 8.* and 2. *Ed. 6.* For the first and last of these; because they are now both in common practice, and thence known enough in generall to euery man, I abstain purposely to speak more of them; sauing only that for the first; out of the more ancient ages, I obserue somewhat by the way which may belong to the vse of the present. In 21. *Hen. 3.* when all the Clergie of *England*, in the Nationall Synod held at *London*, vnder *Otho* the Popes Legat, made supplication to haue redresse from the King, of some grieuances, <sup>1</sup> one was, *Quod iudices seculares non decident causas Ecclesiasticas in foro seculari &c.* *¶* *utrum danda sint Decime de Lapidinis, vel*  
Syl.

q Vide *Barth.*  
*Nat. Br.* fol. 40. N.

1 *Quod. Barth.*  
*Monast.* in *Bibl. V.*  
*CL. 18. Allen.*  
*Oxon.* sub ann.  
 1257.

*Syluicedijs, vel Herbagijs, vel Pafuris, vel de alijs Decimis non confuetis.* which shews that the temporall Courts also in those elder times, determined what was titheable or not, & so made prohibitions *De non decimando*, according to the Processe in *France* vpon their *Philippin*, and in *Spain* vpon the *Carolin*, and according to that note in the *Register* and *Fiszherberti* touching the Iustices determination of what is titheable. agreeing to this is a Case of 8. Hen. 3.

f Fol. 54. b.  
t N. B. fol. 53.

“ where in a prohibition was granted against a Parson that sued for the Tithes of Rent. But you shall haue it as it is in the Record. *Warwick*. Magister *Eustachius* de *Cestreton* attachiatus fuit ad respondendum *Hugoni* de *Lege*, quare contra prohibitionem &c. trahit eum in placitum in Curiam Christianitatis de Laico feodo ipsius *Hugonis* in *Cestreton*; vnde Idem *Hugo* queritur quod ipse exigit ab eo in Curia Christianitatis de certa pecunia pro Decimis molendinorum, & certum pratum, scilicet tres acras prati, & præterea de Wareto suo; & de terris incultis si illas locauerit ipse petit Decimum denarium &c. Et Magister *Eustachius* venit & defendit contra eum & contra sectam suam, quod nunquam traxit eum in placitum de aliqua re certa nisi tantum de Decimis fæni & molendinorum sicut Decimæ inde dari debent, nec aliquam acram prati petit nec denarios de molendinis, nec ali-

“ quid

u Placit. & In-  
quisit. 8. Hen. 3.  
in Arce London.

" quid de Wareto vel terra nisi tantum garbas;  
 " & ideo præceptum est eidem *Eustachio* quod  
 " de nullo placito de cætero sequatur in Curia  
 " Christianitatis, nec de aliquo Laico feodo nec  
 " de aliquo quod sit contra Coronam Domini  
 " Regis. But, to leaue this and to go to the I I.  
 and I I I. and I V. courses of proceeding for  
 Tithes in temporall Courts, which are not so  
 obuiously known; for the I I. touching the  
 Writ of *Right of Aduowson of Tithes*, and the  
*Indicauit*. it hath bin cleer euer since the Statut  
 of *Westminster 2. cap. 5.* and of *Circumspecte agat-*  
*is*, both made in 13. *Ed. 1.* (this as well as the  
 other long since being receiud into practice by  
 the name of a Statut, and so called in Acts of  
 Parlament; although it were anciently reputed  
 rather as an Ordinance made \* by the King and  
 Prelats) that if *A. Parson of Sale* (for examples  
 sake) libell against *B. Parson of Dale* in the spi-  
 rituall Court, for so much Tithes and Offrings,  
 possessed by *B.* as amount to the fourth or a  
 greater part of the value of the Church of *Dale*,  
*B.* may haue him prohibited by an *Indicauit* di-  
 rected to him and the spirituall Iudge, after  
 which the Patron of *A.* hath no other remedie  
 for himselfe or his Encumbent (what right foe-  
 uer they haue) then to bring a Writ of *Right* in  
 the cōmon Pleas, of *the Aduowson* of that fourth  
 part, against the Patron of *B.* in which Writ,  
 the right of those Tithes must be tried by the  
 com-

x 19, *Ed. 1. tit. 7. Ju-*  
*risdictio 28.* &  
*Sec Cosins Apelo-*  
*gie part. 1. pag. 57.*  
*etc. & Rot. Par-*  
*lam. 25, Ed. 3. ar-*  
*tis. 62.*



common Law. and herewith expressely agrees the Statut of *Articuli Cleri*. and the reason is because that if the determination of this Plea should be allowd to the spirituall Court, then might the Patrons Aduowson of such a part be there lost by iudgement according to the Canons, whereas the right of Aduowson and Patronage of Churches or Tithes only belongs, by our ancient Laws and at this day, to the secular Court. Neither is the Writ so much of the Tithes as of the Aduowson of the Tithes; *Præcipe A.* (so are the words) *quod reddat B. aduocationem Decimarum tertiæ vel quartæ partis Ecclesiæ de C. &c.* And howeuer by the Canon Law the right of Tithes be meerly spirituall, and so not due to the Rector so much by reason of his presentation from the Patron, as of the common right challenged by the Ministerie (whereupon also <sup>a</sup> *Lindwood*, like a Canonist, thinks it not preiudiciall to the Patron, which way soeuer the Tithes alone be determind of, in regard that all the Patrons interest is, hee saies, originally in the foundation, building, or endowing of the Church with Manse, Glebe, or Rent, and hath no relation to the Tithes which by common right are receiud without his Dotation) yet by reason it seems both of our ancient practiced Law of Dotation of Churches by arbitrarie conueiances of Tithes, at the owners pleasure, in which doubtlesse Patrons very frequently <sup>b</sup> encreased

H h h

the

<sup>a</sup> *Consiliu, Prebend. tit. de foro compe-  
tentiæ. c. Circumspice.  
Ite. verb. quarta  
part.*

<sup>b</sup> *Videbis Matro.  
Paris pag. 716.  
lib. 40.*

the reuenues of foundations with the Tithes of their Demefnes; as also of that other ancient vse of Inueftiture, wherein the very interest of all the Glebe, Tithes annext, and other reuenues, was transferd into the Encumbent by the Patron; it was thought fit that the Aduowson of the Tithes alone should be equally reputed, for what concerned the Patron, with any other part of the Churches reuenue. And the Law hath been cleer thus, and so still practised \* since the Statuts before cited. they permit not the spirituall Court to hold Plea of Tithes of the value of the fourth part, where the Patronage is questionable; but will haue the Aduowson thereof tried alwaies by the common Law after the prohibition of *Indicauit*, which (being purchased aswell at the suit of the Patron as of the Parson) recites that the Parson defendant in the spirituall Court *Tenet<sup>d</sup> medietatem* or *quartam partem omnium Decimarum* prouenientium de &c. de aduocatione of the Patron &c. And then, *Quia manifestum est quod prædictus* the Patron *iacturam aduocationis Decimarum prædictarum* incurreret si *prædictus Rector in causa illa* (that is the Parson plantif) *obtineret; vobis prohibemus ne placitum illud teneatis in Curia Christianitatis donec discussum fuerit ad quem illorum pertineat earundem Decimarum aduocatio.* And then according as the right shall afterward be tried in the Writ of right, the spirituall Iudge is to giue \* sentence.

The

e 7. Ed. 1. fol. 42. b  
 8. Ed. 3. fol. 50. a.  
 Reg. Orig. fol. 29. b  
 38. Ed. 3. fol. 13. a. a.  
 16. Ed. 3. m. Qua-  
 7. m. p. 127.  
 28. Hen. 6. fol. 20. a.  
 Fitzh. N. B. fol. 30. e  
 Seegerman. fol.  
 105.

d 31. Hen. 6. fol.  
 24. b. & Bratt.  
 lib. 5. tract. de Ex-  
 ceptionibus cap. 4.  
 fol. 403. a. & vide  
 Fitzh. Nat. Br.  
 fol. 45. D.

e W. 1. m. 3. cap. 5.

The same Statuts allow, to the spirituall Iurisdiction, conisans of a fifth, and of all parts lesse then a fourth of the value of the Church in tithes controuerted twixt two Parsons. and no *Indicauit* <sup>f</sup> is grantable to forbid the suit of one of them, commenced for any lesse part, in respect of the Patrons right only. Neither vpon them, by consequence, hath any Writ of right of any part of Tithes that appears not to be a fourth part of the Churches value, been allowable. But, for this point; how the Law was before those Statuts of 13. *Ed.* 1. is a great question in our year books, and diuers are the Opinions touching it. Some <sup>h</sup> think that before the Statut of *West.* 2. *cap.* 5. (out of which, ioind with *Circumspecte agatis*, they limit the *Indicauit* to the fourth part) no Writ of right of Aduowson of any Tithes lay by the common Law. Others ghesse that before that time a Prohibition or *Indicauit* lay vpon euery suit in the spirituall Court <sup>i</sup> for Tithes, and that the Patron might haue had his Writ of <sup>k</sup> right vpon such prohibition against the suit of his Encumbent, either of a fifth or sixth part, and that these Statuts restrained him to the value of the fourth part at least. Others haue herein other fancies. But, it is plain first, that long before those Statuts, Tithes were demandable, of the owner detaining them, of their own nature, and pleadable, in the Spirituall Court. and that affirmed in *Fleta*, was regu-

f *Artic. Cleri.*  
cap. 3.

g 18 *Ed.* 2. *tit.*  
Brief. 825. & *Regist. Orig.* fol. 20. b.  
Vile *Forth. Nat.*  
Br. 45. D.

h Moile 18. *Hen.*  
6. 10. a. *Forte.*  
31. *Hen.* 6. 14. a.  
*Sringerm.* fol. 108.  
& voyez 18 *Ed.* 3.  
19. a. 16 *Ed.* 3.  
*tit.* Quare impedit 147.

i Markham 38.  
*Hen.* 6. fol. 10. a.  
Ch. *Parm.* 4. *Ed.* 3.  
fol. 27. b.  
k *Regist. Orig.* fol.  
29. b. *Forth.* B. 30. B.  
*Forte.* 38. *Hen.* 6.  
fol. 20. a.

1 *Pleta. lib. 6.*  
cap. 37.

2 *Lik. 5 de Excep-*  
*tionibus cap. 4. fo.*  
403. & cap. 10.  
fol. 407.

larly before true. *Decima* <sup>1</sup> *in quantum Decime* (in suits against the Parishioners) *debent in foro Ecclesiastico intentari*, wherewith *Bracton*, \* li-  
uing in the time of *Henrie* the third, also agrees. But it is as plain that before those Statuts, if the Rectors of two Churches of seuerall Auowries, had controuerted the right of a fourth part (or of the value of either of their Churches more) in Tithes, by suit commenced in the spirituall Court, the Patron of the Rector-defendant might haue had an *Indicauit*, to prohibit the prosecution and holding of the Plea. *Bracton* teaches vs that; and hath the forme of the Writ to the same purpose, and giues his reason, *Quia posset Patronus, iacturam suae aduocationis incur-  
rere*. But somewhat doubtfully he limits the quan-  
tity of the Tithes to the sixt part at the least, be-  
yond which denomination the *Indicauit*, hee thinks, lay not for any part. His words are: *Si contentio fuerit inter Rectores de aliquibus Decimis  
que estimari possunt vsque ad quartam, quintam,  
vel sextam partem aduocationis, ultra quam par-  
tem non extenditur prohibitio vt videtur, tunc fiat  
Iudicibus (Ecclesiasticis) Prohibitio in hac forma.  
Rex talibus Iudicibus salutem. Indicauit mihi &c.*  
But he mentions no Writ of right of Aduowson of Tithes that should follow. Hee saies indeed that vpon the *Indicauit*, by consent only of the Patrons, there may be an enquest taken (the Iurie being returnd into Court by *Venire facias* or *Distingas*

Disfringas had by petition of them so consenting) *tanquam de Aduocatione*, to find *Virum talis presentatus à tali Patrono recentèr fuerit in seissina de talibus Decimis tanquam spectantibus ad Ecclesiam suam quam tenet de presentatione talis Patroni sui, vel si talis alia persona inde fuit in seissina tali tempore vt de Decimis spectantibus ad Ecclesiam suam talem quam tenet de aduocatione talis Patroni sui.* But how euer Bracton's owne opinionion (yet doubtfully) be, that the *Indicauit* might bee brought for the sixt part, and for no lesse, yet, it seemes, the practice of the age was otherwise. and that no determination was in his time, nor before 13. Edw. 1. of any certaintie therein; which is expressly deliuered in the Grievances comprehended in the Nationall<sup>m</sup> Councell of London in 21. Hen. 3. where all the Clergie entreated Otho the Popes Legat, that hee would perswade the King to alter and correct certaine proceedings, *quæ fuerunt in regno Angliæ in præiudicium libertatis Ecclesiasticæ*; among which, one is, *Item ne currat prohibitio* (you must vnderstand the *Indicauit*) *Ne Iudices Ecclesiastici cognoscant de iure Patronatus quominus Clerici possunt petere Decimas tanquam de iure Communi ad Ecclesias suas pertinentes. Quia Patroni Ecclesiarum vel Capellarum quæ Decimas petitas possident, dicunt per talem petitionem Iuri Patronatus sui derogari, & nolunt Iusticiarij Domini Regis Iudicare quora*

*pars Decimarum peti possit vel debeat coram Iudice Ecclesiastico.* And another, *Item ne currat prohibitio Domini Regis, ne Rector Parochialis Ecclesie impetat eos qui percipiunt Decimas infra limites Parochie sue.* By both which, compared

with the ancient Bookes, it appeares, that the Kings Prohibition lay commonly, if the Aduowson of the Tithes were between two persons questioned, and that also (for aught occurs to the contrarie, except *Bracton's* coniecture) if any part of the Tithes or the Aduowson (which in such a suit were reputed as one) had been controuerted. To these testimonies may be added this, in the Epistles of the most learned <sup>n</sup> *Robert Grossetest* Bishop of *Lincolne* vnder *Henrie* the third, whereby the course of *Indicauit* is proued, and also taxed for iniustice against the libertie of the Church. Thus is it spoken of among other

“grievances of the Clergie. *Item* in Ecclesie  
 “libertatem non mediocriter delinquitur, cum  
 “Iudices Ecclesiastici, ne causas quas notum est  
 “purè esse Ecclesiasticas in foro discendant Ec-  
 “clesiastico, à domino Rege prohibentur. Vt  
 “per literas Regias inhibetur ne Iudex Ecclesi-  
 “asticus iudicialiter cognoscat vtrum Ecclesia  
 “vel Capella talis loci sit Capella Matricis Ec-  
 “clesie alicuius alterius loci, & vtrum Decimæ  
 “talis terræ ad hanc vel ad illam pertineant Ec-  
 “clesiam, eò quòd si Actor in huiusmodi causa  
 “euincat possessionem, Ecclesie Rei contingeret

“immi-

“ imminui ac per consequens, vt aiunt, ius Patro-  
“ natus eiusdem Ecclesiæ deteriorari, Ecclesiã  
“ ad quam Patronus præsentabat effectũ minus  
“ pingui. Accideret namque ratione consimili,  
“ omnem causam super possessionem vel quasi  
“ possessionẽ Ecclesiasticam inter duos Rectores  
“ duarum Ecclesiarum diuersorum Patronatu-  
“ um emergentem, ne ventilaretur coram iudi-  
“ cibus Ecclesiasticis à domino Rege debere  
“ prohiberi; eo quod Actore in huiusmodi causa  
“ euincente, cõtinget semper Ecclesiam Rei im-  
“ minui ac per hoc, secundum quod dicunt, Pa-  
“ tronatum eiusdem deteriorari. Consequetur  
“ autem & sic quod huiusmodi causæ Eccle-  
“ siasticæ nunquam discinduntur. A seculari  
“ enim iudice discindi non poterunt, neque ab  
“ Ecclesiastico iudice, obstante Regiã prohibi-  
“ tione. Fortè autem nec consequitur quod in  
“ huiusmodi casu, euincente actore, imminue-  
“ tur Patronatus alterius Ecclesiæ. Non enim  
“ minus est Patronus qui minoris Ecclesiæ est  
“ Patronus, sed nec minùs est pater qui minoris  
“ hominis est pater. Patronatus enim seu ius  
“ Patronatus non intenditur vel remittitur ex  
“ maiortate vel minoritate rei cuius est Patro-  
“ natus. Præterea sed tubera & ea quæ contra  
“ naturam excreſcunt in carne hominis non au-  
“ gent ipsum hominem, & medicinalis abscissio  
“ innaturalium huiusmodi excrementorum ip-  
“ sum hominem non imminuit sed potius pul-  
“ crificat



" crificat & sanat. Ita iniuste possessiones &  
 " quasi possessiones Ecclesias ipsas non augent  
 " sed deturpant, & earum abscissio per iustum  
 " iudicium non est Ecclesiarum imminutio, sed  
 " potius pulchrificatio quædam & sanatio; unde  
 " & Patronatus seu ius Patronatus per huius-  
 " modi abscissionem nullo modo potest immi-  
 " nui vel deteriorari, sed multò ampliùs emen-  
 " dari. I faithfully relate it, and censure not  
 the Arguments. You may doe that, Reader,  
 while you smile at the *Magis* and *Minus* in it. But  
 also, although the *Indicavit* prohibited the  
 Spirituall Court, yet it seemes the Temporall,  
 before the Statute of *Westminster* 2. and after the  
 time of *Henry* the second, or thereabouts, held  
 no Plea of right of Aduowson of Tithes, except  
 only vpon Inquest taken by consent of both Pa-  
 trons. something, as you see, might be tried in it.  
 May we not conclude then, that the same Statut,  
 in those words, *Habeat Patronus Rectoris sic im-*  
*pediti breue ad petendum Aduocationem Decima-*  
*rum petitarum*, was the first Autor (at least after  
 the change about the time of *Henrie* the second)  
 of the Writ of Right of Aduowson of Tithes?  
 Which also is well iustified by the pleading of  
 the Abbot of *Selbies* case, within six yeeres after  
 the Statute, wherein the parties (according to  
 the fashion of argument in pleading of that  
 time) agree, ° *Quod breue de quarta parte De-*  
*cimarum primo locum habere cepit à tempore Sta-*  
tuti

tuti Regis nunc apud Westmonasterium inde editi  
 &c. Neither rests any scruple, touching the  
 fourth part, why the Prohibition in the *Indica-  
 uit* and the Writ of Right, should bee of the  
 fourth part only, or of a greater, although the  
 Statute of *Westminster* 2. speak of no certaine  
 part. For, that of *Circumspecte agatis* ordaines,  
 That no Prohibition or *Indicauit* should lye,  
 where the part controuerted is lesse then a fourth  
 (it being before grantable vpon such suit for a  
 sixt part, by *Bracton's* opinion; and it seems in-  
 deed, vpon suit for any part) and the Statute of  
*Westminster* the 2. giues the Writ of Right only  
 where the *Indicauit* is first sued. And for this  
 matter of *Indicauit* (which concernes properly  
 suit between Rector and Rector, not between the  
 Rector and the Parishioner) take as a note by the  
 way the aduice of the Bishops among themselues  
 in 41. *Hen* 3. against the Temporall Courts. In  
 the Annales of *Burton* it is extant, & thus speaks.  
*Concilium Archiepiscopi & omnium Episcoporum  
 super Articulis propositis apud London. Petit per-  
 sona Ecclesiastica Decimas coram Iudice Ecclesi-  
 astico. Iudicanti & petenti porrigitur Regia Pro-  
 hibitio nomine Patroni Ecclesie cuius Rector con-  
 uenitur, ne super Aduocatione seu Patronatu Ec-  
 clesie Iudex ille cognoscat; si actor prosequatur &  
 Iudicantis officium \* assumat, uterque attachiatur  
 & attachiari veniunt Consilium tale est, quod si  
 Iusticiarij causam Decimarum sub colore querelæ*

\* *f. ind. n.*

*Aduocationis Ecclesiarum ad se trahere velint & de non proseguendo vltcrius causam Decimarum in foro Ecclesiastico & Iudice siue a Parte securitatem exigunt, in nullo eis caueatur. Et si propter hoc arissentur, per loci Diocesanum requirantur siue per Episcopum proprium. Et si libere non tradantur Ecclesie, competenti monitione premissa excommunicentur Iudicantes & detentores. Et si queratur a Iudice quota pars vel quanta petatur, non respondeatur.* But this aduice of theirs was to litle purpose, nor durst they, questionlesse, haue put it in execution. The Statuts of Westminster the 2. and *Circumspecte agatis* gaue them some remedie; whereof enough alreadie.

IV. Of Writs of *Scire facias*, graunted to call men to answer in the Chancerie for Tithes, sufficient testimonie is in the Statute made for the Clergie in 18. Ed. 3. chap. 7. *Item que per la ou briefs* (so are the words) *de Scire facias eient estre grantez a garnir Prelates, Religieus, & autres Clerks a respondre des Dismes en nostre Chancellerie & a monstre s'ils eient riens pur eux ou sachent riens dire pur quoy tielx Dismes a les demandants ne deuent estre reslituees & a responder auxibien a nous come a la partie de tielx Dismes &c.* By this it appeares, that some vse was to graunt such Writs for Tithes. Whence also *Fitzherbert* well inferres, that the right of Tithes was determinable in the Kings Court. But wee haue not in our Yeere-Bookes any case of

of further declaration of that vse before the Statute. But out of good ground you may coniecture, that in these Three speciall cases, Writs of *Scire facias* were grantable anciently for Tithes, and that in those times, before the Statute; either vpon the title of the demandant, first found by *Inquest*, to the Tithes, or returnd by the Shirife; or out of *Fines*, it seemes, leuied of Tithes; or vpon *Patents* of Tithes legally graunted by the King, when, against the Grant, any Clergie man by the Canon Law took them from the Patentee. Of all these, there is faire proof enough. But the third (it seems) hath principall reference to that Statute, as shall anon be shewed. For the course of taking an *Inquest* by commission, which being returnd, might be sufficient ground for a *Scire facias*, it appeares in *Escaet. 8. Ed. 1. numer. 67.* that a commission was sent to *Adam of Eueringham*, Steward of the Forest of *Shirewood*, to enquire by Oath of the Foresters and Verderors, whether the Priors of *Lenton* had vsed to haue all Tithes of the Kings Venison, taken in the Countie of *Notingham*, which they claimed *per Cartas quorundam prædecessorum &c.* And in the Inquisition returned, it is found, that they had vsed to haue it, and that first by the Grant of P King *Iohn*. And in the same bundell, *num. 72.* a Commission is to *Nicholas of Stapleton*, commanding him to enquire, whether the Prior of *Wyke* ought to haue the Tithes of all pro-

p. Videtur Rot.  
Class. 11. Mon. 3.  
num. 120. 3.

sits of the Mannor of Gringeley; *Nobis super iure Prioris in hac parte & facto contrario* (that is, the subtraction of them by Henrie de *Aleman-*  
*nia*, against whom the Prior complained) *certiorari volentibus &c.* Whereupon the Commis-  
 sioner returns, that the Priorie had right by pre-  
 scription, and that *Henry de Alemannia* had sub-  
 tracted them. What could be more proper, then  
 to haue a *Scire facias* vpon the Inquisition, ac-  
 cording to the intent of that preamble of 18.  
*Ed. 3.* in which *Scire facias*, the right might be  
 tried between the parties, and so iudgement be  
 giuen? To these may be added that in *Inquis. ad*  
*quod damnum 8. Ed. 2. num. 79.* Where, per *Pe-*  
*titionem* <sup>q</sup> in *Consilio*, the Abbesse of Godestow  
 hath a Writ directed *Custodi equitij sui de Wood-*  
*stock &c.* which relates that *ex parte dilectæ no-*  
*bis in Christo Abbatissæ de Godestow per petiti-*  
*onem suam coram nobis in Consilio nostro exhibitam,*  
*nobis est ostensum quod cum per cartas* <sup>r</sup> *progenito-*  
*rum nostrorum quorundam Regum Angliæ Conces-*  
*sum sit ei, quod ipsam Decimam omnem in Manerio*  
*nostro de Wodestoke, & parco nostro ibidem per*  
*annum renouantium percipiat & habeat, prætextu*  
*cuius.* the Abbesse and her Predecessors had  
 enioied it, and that the Bailife kept from her the  
 Tithe of the Colts, bred in the same Park; where-  
 fore it commands him to restore them if they be  
 so due; which supposes, I think, that he should  
 return an inquest or some discouerie of the truth

q Videis Ret.  
 Part 8. Ed. 2. fol. 23.

r Vide, si placet,  
 Ret. Claus. 21.  
 H. 6. 3. membr. 19.

or falshood of the Plaintifes pretence, although indeed this example may serue also for that part of our diuision of this kind of proceeding which touches *Patents*. But to that Writ is annext the return, that is, the Bailifes acknowledgment in *French* of her right, his name is *William Beaux-ams*. So in *Escaet. 7. Ed. 3. num. 83.* a Commission is sent out to enquire of the right of the Tithes of the Demesnes of the Kings Castle of *Tikbull*, which the Prior of *S. Oswald* claimed. the enquest was taken of it at *Le Faure Oks*, in the confines of *Torkefbire* and *Nottingham*. and in it the particulars of the right are returned. and what should want, that vpon such returns, writs of *Scire facias* might not haue been granted. we omit that before cited out of the Parlament Rols of *18. Ed. 1.* And light also to this practice in the temporall Courts of that elder time, may be had from other Cōmissions or Processe in the Rols; as from that sent by *Henrie* the third into *Ireland*, to the Archbishop of *Casile*, the Bishop of *Ferne*, and the Bishop of *Lismore*, commanding them, that, taking with them *Ieffrey de Marisco* then Iustice (or Lord Deputie) of *Ireland*, or some other whom hee should appoint, they should enquire by the Othes of both Lay and Clergie men, whether *Bartholmew de Camera* Parson of the Chappell of *Limeric*, or *William of Caerdiff* Treasurer there, had seisin of the Tithes, *De Piscaria & Molendinis de Limeric*,

*1. Par. 9. Hen. 3.  
part. 1. number 3.*

*tempore Ioannis Regis Patris nostri ante guerram motam inter ipsum & Barones &c.* But it may be also that these Enquests or Returns made of the Title to Tithes by the Shrise, were only in case where the Tithes increased out of the Kings Demesnes, or perhaps immediat Tenancies. The examples seem not to go further. and in *6. Ed. 1.* a Petition was exhibited in Parliament by one *Piers* a Chaplain of the Earle of *Sauoy*, against the Prior and Couent of *Lewes*, for a Tithe giuen him by the Prior and Couent in the Parish of *Weston*, in the Diocese of *Ely*, whereof another grant had been afterward made by them to one *Richard de Meuton*; and *Piers* beseeches the King to send his writ to the Shrise of *Cambridge*, to put him in possession; but this answer is indorsed. *Rex non intromittit se de hijs quæ taliter spectant ad forum Ecclesiasticum; sed prosequatur Ius suum versus Clericum qui tenet Ecclesiam, coram Ordinario.* Here was an expresse exclusion of the Temporall iurisdiction in such a case, where an originall Writ or Commission was commanded to settle or inquire of the right of Tithes, that toucht only common persons. But whenever through such means the title appeared vpon record, I vnderstand not why a *Scire facias* might not aswell be issuable (although I haue not met with an expresse example of that kind) as in the last course that is vpon the title appearing in Patents of the King or his Ancestors.

*2. In fascic. Pat. 6.  
Ed. 1. in Arce  
London.*



V. For that second ground of Writs of *Scire facias*, which we suppose to be *Fines*, leuied of Tithes; why was it not as likely that vpon such *Fines* leuied, Writs of *Scire facias* should lie as vpon any others of Lands or Rents. and that *Fines* of the right of Tithes were in the Kings Courts anciently leuied, is manifest: not as I remember vpon Writs of *Couenant*, which yet may (for aught I know) at this day be brought, in the temporall Court, for spirituall <sup>u</sup> Tithes, in regard nō Tithes but damages are only to be recovered; but chiefly in Writs of *Right of Aduowson*. For example, *In Fin. Trinit. 10. R. Iobannis Wilt. apud Windlesore coram ipso Rege, Simone de Pateshulle, Iacobo de Poterna, Henrico de Audemero Iusticiarijs & alijs Domini Regis fidelibus tunc ibidem presentibus.* vpon a Writ of right of Aduowson brought by *Aseclina* Abbessē of *Wilton*, against *Henrie* of *Abeny* for the Patronage of the Chappell of the greater *Wicheford*, the concord is, that the Abbessē grants it to him in Fee, sauing a pension of two shillings yeerly to the Church of *Neweton*, being  
 “ a Prebend of *Wilton*. Et pro hac recognitione & quietā clamatione & fine & concordia  
 “ idem *Henricus* remisit & quietum clamauit de  
 “ se, & hæredibus suis prædictæ Abbatisæ &  
 “ Ecclesiæ sanctæ *Eduthæ* Virginis in *Wilton*, &  
 “ eiusdem loci conuentui, *all his right in certain*  
 “ *Lands*, & recognouit & concessit omnes De-  
 “ cimas

u 38. Edw. 1. fol. 8.  
 & Regist. Orig.  
 fol. 105.

" cimas de Dominico suo in maiori *Wicheford*,  
 " esse pertinentes ad prædictam Ecclesiam de  
 " *Neweton*, quæ est Præbenda de *Wilton* sicut  
 " eas habere solet, excepta Decima bladi pro-  
 " ueniente ex viginti acris terræ quas persona  
 " prædictæ Capellæ elegerit de Dominico ipsi-  
 " us *Henrici*. quam Decimam persona per *Hen-*  
 " *ricum* prædictum, vel hæredes suos ad prædi-  
 " ctam Capellam de *Wicheford* præsentata, &  
 " admissa per visum personæ quæ prædictam  
 " Præbendam de *Neweton* habuit, vel per visum  
 " balliui eius debet recipere in autumnno, sicut  
 " ab antiquo recipere consuevit. The record is  
 worthy of speciall obseruation. And in the Lei-  
 ger book of the Priorie of *Merton* in *Surrey*, a  
 Fine is of *Pasch. 12. R. Ioh.* before the King and  
 the same Iustices, between *William* de *Cantelupo*  
 Defendant, and *Walter* Prior of *Merton*, vpon  
 the right of Aduowson of the Church of *Eyton*,  
 wherein it is agreed that the Chaplain of the  
 demandants in *Eyton*, shal not take à *parochianis*  
*eiusdem Ecclesie nec in Decimis, nec in Oblationi-*  
*bus, nec in Confessionibus &c.* but leaue them all  
 to the Parish Church of *Eyton*. and in this, some  
 may, as in the other, note the pretended interest  
 of the Patron, in disposition of any of the Reue-  
 nues of the Church. which anciently claimed,  
 while Inuestitures continued, was not as yet o-  
 mitted in these Legall proceedings or instru-  
 ments, that is, Fines; which are of greatest curio-  
 sitie.

fitie. and according hereto is a Fine of 7. *Rich. 1.* leuied between the Prior of *Stanes* and *Alice Hopton*, of the Aduowson of the Church of *Cbeklegb* in *Staffordshire*, where *Alice* as Patronesse grants to the Priorie, among other things, *Omnnes Decimas ville de Northmankote in perpetuum que est de eadem Parochia*, that is of *Cbeklegb*. and in the <sup>a</sup> Chartularie of *Gisburn*, in a Fine of 23. *Hen. 3.* between *Peeter de Bruis* plaintif, and *Iohn* Prior of *Gisburn* (in the Prouince of *York*) defendant, *In droit d' Auowson*, *Peeter* grants *vt ius suum omnes Decimas superscriptas quas &c.* The like also doth he in a Fine of 26. *Hen. 3.* there transcribed. and in 30. *Hen. 3.* also, of which more particular mention is before made.

V I. But for Writs of *Scire facias* brought vpon the third ground, that is, in Case where the title appears vpon record in Patents made of the Tithes from the King or his Predecessors; take this speciall example of 17. *Ed. 3.* A Writ was directed to the Shrise <sup>b</sup> of *Essex*, relating that *Maude*, *Quondam Regina Angliae*, granted to the Deane and Canons of the Kings free-Chappell of *S. Martins* in *London*, the Churches of *Witteham* and *Chersinges*, *Cum Capellis & Decimis &c.* and that they were thereof and of the Tithes of *Witteham* and *Cheresinges*, seised till 16. *Ed. 2.* and that since the Abbot of Saint *Iohns* of *Colchester* took from them two parts of “ the Tithes &c. Et quia nos omnia & singula

<sup>a</sup> In Bibl. Cotton.

<sup>b</sup> Fascicul. Brim.  
de 17. Ed. 3. parte.  
1. et 3. in Arce  
London.

iura liberæ Capellæ nostræ supradictæ manu-  
 tenere volumus & tenemur, & ea quæ substra-  
 cta fuerint siue iniuste occupata reuocare, tibi  
 præcipimus. quod scire facias nunc Abbati  
 quod sit in Cancellaria nostra in quindenam  
 S. Iohannis Baptistæ prox. futurum vbicunq;  
 tunc fuerit ad respondendum tam nobis quam  
 præfatis Decano & Capitulo de vsurpationi-  
 bus, occupatione, & detentione dictarum dua-  
 rum partium decimarum prædictarum & ad  
 ostendendum si quid pro se habeat vel dicere  
 sciat quare dictæ duæ partes Decimarum ea-  
 rundem eisdem Decano & Capitulo adiudi-  
 cari non debeant, & ad faciendum & ad reci-  
 piendum vlteriùs quod curia nostra conside-  
 rauerit &c. teste &c. apud Westmonast. 17.  
 Iunij anno regni nostri 17. Per Regem & Con-  
 silium. This Writ was returnd with *Scire fe-*  
*ci* by *H. Gernet* Shrise of *Essex*, and by consent  
 of the parties it is referd to *Mibelmas Terme*  
 following *In Statu quo nunc*. the Writ is both  
 in part 1. and 3. of that yeer, but to that in part  
 3. which is of *Trinitie Terme*, a Plea of the Ab-  
 bots is annext in these words. Et prædictus  
 Abbas per atturnatum suum dicit quod præ-  
 dicti Decanus & Capitulum per breue suum  
 non supponunt quod Ecclesiæ de *Witteham*  
 & *Cherejnges* sunt de fundatione dictæ liberæ  
 Capellæ Domini Regis, sed quod illas Eccle-  
 sias tenent de dono *Matilde* quondam Regi-  
 næ.

" nã Angliæ post foundationem dictæ liberæ Ca-  
 " pellæ, & dicit quod tempore doni, prædi-  
 " ctæ Ecclesiæ fuerunt in iurisdictione ordina-  
 " riâ videlicet Episcopi *London.* & continuè  
 " post donum hucusque fuerunt & adhuc sunt in  
 " præsentî in iurisdictione ordinaria. Et dicit  
 " quod prædictæ Ecclesiæ fuerunt visitabiles &  
 " visitatæ per Episcopos *London.* in visitationi-  
 " bus suis à tempore à quo memoria non extat.  
 " & prædicti Decanus & Capitulum per breue  
 " suum petunt decimas quas supponunt esse par-  
 " cellam earum Ecclesiarum quæ sunt in iurif-  
 " dictione Ordinaria in forma prædicta, & sic  
 " Decimæ illæ sunt merè spiritualia & non pla-  
 " citabilia nisi in curia Christianitatis; per quod  
 " non intendit quod Curia ista in hoc casu cog-  
 " nitionem habere debeat. Here it appeares,  
 that the Counsell of the Abbot of *Colchester* De-  
 fendant, supposed that the conisans of the Tithes  
 was spirituall only, vnlesse they were originally  
 part of the Kings free Chappell. how the Case  
 was determined, appears not. But in the next  
 Parlament following was a Petition exhibited  
 by the Clergie in those words before cited &. *I V.*  
 complayning of the granting of such Writs  
 of *Scire facias*, and vpon that Petition the King  
 answered, *Que tielx breifs desore nauant ne soient*  
*grantes, & que les Proces pendant sur tielx breifs*  
*soient anentes & que les parties soient dismisses de-*  
*uant secular Iudges de tielx manner de Plees salue*

*a nous nostre droit tiel come nous & nostre anceſſors auoient eue & ſoloient auer de reſon.* I think we need not doubt but that this very Caſe of the Abbot of Colcheſter was no ſmall cauſe of that Petition of the Clergie. and you ſee mention is, in the anſwer, of ſome Writs hanging, whereof this is moſt likely to haue been one. But howeuer the Petition was answered, and although out of this Petition and anſwere that Act of 18. Ed. 3. hath been receiud among our Statuts, and commonly goes for one, yet might it deſerue further conſideration then I will here ſeem to take of it. only I admenish that within foure years after, a *Scire facias* was <sup>b</sup> brought by a Patentee of Tithes in the Foreſt of *Inglewood*, and that againſt a Prior being Pernor of them; and by iudgment the Writ was allowd without mention or the leaſt regard had of that Act. why that was ſo, or what force the Act hath, let others examin; I purpoſely abſtain.

<sup>b</sup> 22. Affiſ. pl. 95.

VII. But for Proceſſe of bare command of payment of Tithes, or the like; when the title was by Patent cleerly ſuppoſed true, the Shriſe or other Officer was ſometimes commanded by Writ to take order that the demandant might enioy his Tithes. As in *Clauf. 7. Hen. 3. part. 1. membran. 6.* the King directs his Writ to *Brian de Inſula* Keeper of the Foreſt of *Shirewood*, telling him, that *pro ſalute animæ Domini Ioannis Regis patris noſtri conceſſimus Monachis*

nachis de Basingwere, quod percipiant hac vice vsque ad Festum S. Michaelis Anno regni nostri VII. Decimas de bladis seminatis in defenso nostro inter Blakebroc & Glossop, & ideo vobis mandamus quod ipsos Monachos hac vice sine impedimento permittatis Decimas prædictas percipere. T. &c. And such more sometimes occurre. But this, and the most of that age that are of this matter, indeed appeare to haue bin of Tithes in a Forest also, as that of 22. Ed. 3. is in the Booke of *Assises* (which happened after the Statute of 18. Ed. 3.) and you may remember those before cited out of 6. Ed. 1. and 18. Ed. 1. in Chapter XI. §. III. and the example of 8. Ed. 2. before remembered touching *Woodstock Parke*. So in *Rot. Claus. 5. Hen. 3. part. 2. membr. 14.* the Bishop of *Salisburie* hath his fiftie shillings yeerely *nomine Decimæ*, out of *New-Forest* (which c Henrie the second had granted to his Church by the name of *omnes Decimas de Noua Foresta &c.*) and other like out of other, paid him by Writ to the Sherife; and in *Rot. Pat. 11. Hen. 3. membrana 5. part. 1.* *Euslase* Bishop of *London* hath the Tithe of the Kings Venison, taken in the Forest of *Essex*, (according to King <sup>d</sup> *Iohns* Graunt) by Writ directed to the Foresters and Bailifes of that Countie. Neither would they (it seemes) in that age permit any suit for the Tenths of Venison or Beasts of the Forest in the Spirituall Courr,

c. Cart. Antiq.  
CC. in dorf. 10. in  
Arce Lond.

d. Rot. Chart. 6.  
R. Ich. membr. 12.  
sh. 107.



a 20. 4<sup>th</sup> Londin.f Par. 16. Hen. 3.  
memb. 7.

(although those Tenths were most commonly settled in one Church or another by Grant) as may be seen in *Mich. 9. & 10. Hen. 3. Rot. 15.* where *Iohn Fitz-Robert*, in an Attachment vpon a Prohibition against *Philip of Ardern* Clerk, in the pleading allows, that for Tithe of Hay and Mills, the prosecution in the Spirituall Court was lawfull; but hee further sayes, that *de Decima Bestia Forestæ eum implacitavit contra prohibitionem &c.* And herewith may be considered also the Kings <sup>f</sup>command, sent to the Constable of *Windsore* Castle, that the Church of Saint *Iohn* in *Windsore* should haue *Decimas Gardini Regis de Windlesbores*. But out of these all (as out of the examples before brought of Commissions to be returned) it may perhaps be collected, that only the Tithes of the Kings lands, or belonging to his Churches, were to be ordered or commanded to be paid by these kind of Processes. I confesse I haue not seene enough to perswade mee otherwise, for the time after about King *Iohn* or his neere predecessors. Yet, that as I leaue the iudgement of all, which historically I<sup>r</sup> relate to the able Reader, so I may not defraud him of what in any kind may giue light; here I offer him also this Writ of *24. Hen. 3.* that seems to touch the temporall Courts determination of the right of such Tithes, as, for aught appears, belonged neither to the Kings Churches, nor were encreasing

sing in his Demesnes or immediat Tenancies.

*Henricus Dei gratia Rex \* Angliæ & Vicecomiti Hertford salutem. Licet aliàs tibi significauerimus*

\* In Cartis Abbat. S. Albani, &c.

*quòd non permitteres Ecclesiam de Hamelamstede spoliari Decimis ad ipsam pertinentibus, & quòd Ecclesiam ipsam manuteneres, & defenderes in eo statu in quo fuit tempore Syluij quondam Rectoris eiusdem Ecclesiæ; non tamen fuit intensionis nostræ quòd occasione illius præcepti aliqua alia Ecclesia Decimis suis spoliaretur. Et ideo præcipimus quòd occasione illius præcepti nullam violentiam inferas vel inferri permittas Monachis S. Albani super Decimis spectantibus ad Ecclesiam suam de Redburne quas per XX. annos hætenus pacifice possiderunt. T. meipso apud Westm. 1. die Septembris an. r. n. XXIV. And in like forme was a Writ sent to the Constable of Berkhamstede. But this kind of Proceſſe, and all other such Writs of Scire facias, either vpon Commissions returned, Fines, or Patents, or otherwise, (for aught I could yet learne) haue long since ceased, by reason especially of that receiued Act of 18. Ed. 3. Neither since that one case of 22. Ed. 3. as I ghesse, hath any vse been of an originall suit for Tithes in the Temporall Courts, sauing only vpon Prohibitions and the Statutes of 32. Hen. 8. & 2. Ed. 6. I say, originall suit. for otherwise, the question of the right of Tithes, incident in an Issue at the Kings s. suit, hath since been triable in the Temporall Court; and*

g 38. 40. p. 10.

be-

h. Vide 50. Ed. 3.  
fol. 20. & 22. Ed. 4.  
fol. 24. a.

between <sup>h</sup> common persons also; especially if the right of Tithes, vpon the Issue, were but indirectly or inclusively in question. And although it were directly the very Issue, yet also it hath sometimes been tried in an Action of Trespas in the Kings Bench, as you may see in *Mich.* 12. Ed. 2. *Rot.* 66. betweene *Philip de Say* Parson of *Hodenet* in *Shropshire*, and *Geffrey of Wolsele* Parson of *Cbedleton*, for Tithes in *Marchumle*. But of these things hitherto; and enough.

*The end of the Historie  
of Tithes.*

**A**FTER some few Copies, thus halfe printed and halfe writen, were disperfed, and ſince the various Cenfure of vnequall Readers, (ſome of them cauilling at ſuch Paſſages in it, as the Autor at firſt thought, and not without cauſe, had been enough cleered) this ſhort Reuiew is now added; wherein, beſide ſome other Confirming and Declaring Autorities, by the way alſo, and opportunely enough, occurre ſome Admonitions briefly offered, that may ſomewhat direct in the Vſe of this Historicall truth. The printed ſheets could not be encreaſed, or altered. neither was it ſo fit, after many hands had the whole, that Additions inſerted, ſhould make any variance from the writen part. And plainly, that of the Admonitions, for direction in the Vſe, of its own nature rather required a ſeueral place, then was fit to haue been mixt in the bodie of the Hiftorie. In the name therefore of Goodneſſe and Learning, I earneſtly beſeech euery one, that hereafter ſhall get it either Copied or Printed, to ioine alſo (if hee may) this Reuiew with it.

### Of the I. Chapter.

**I**N the I. §. touching that of *Abrahams* Tithes being of the ſpoiles of Warre only; I know many think otherwiſe. And beſide the generall name of *Tithes* of all, reaſons are drawn for their ſide out of thoſe words of the Patriarch to the King of *Sodom*; *I will not take of all that is thine ſo much as a thred &c.* I neither profeſſe to

diſ-

a Vide *Fran. Junium in Anal. Gen.* 2. f. cap. 14.

b *Consulas Eucherium Lugd. in Genes. lib. 2. cap. 17. & 18. & D. Anselm. in Epist. ad Ebros. cap. 7.*

c *Ad cuius interpretationem etiam consule, si placet, Eustathium ad Odyss. 7.*

d *In lib. 2. cap. 1. Tit. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

e *Lib. 2. in Genes. cap. 15. & 17. f. Tom. 1. lib. 1. cap. 42.*

f *Hieronymus, 1. 2. 3. 4. in Epist. ad Ebros. loco citato &c.*

h *Epiphanius in hares. 55.*

i *Autor 78. Misra. hagalah apud Rab. Tarchi in Genes. 14. & alij ibid. item Misra. in Psalm. 76. apud Galatin. de Arcan. lib. 3. c. 9. quem & vide lib. 10. cap. 6.*

k *D. Ambr. lib. 3. de fide cap. 5. Hieronymus. & Epiphanius. vbi sup. & hares. 67.*

dispute it, nor find I any such consequent out of that Text. And the answer to the objection is not difficult. But I adde here to those testimonies both of *Jews* and ancient Fathers which I have cited, (for I was willing to make their testimonies my warrant, not to glosse the text with my owne interpretation, or with the fancies of petie names) that S. *Ambrose* and *Eucherius* Bishop of *Lions* call those Tithes also *Decimas prae & victorie*. And in one passage, *Eucherius* having a plaine regard to the words of the Epistle to the *Ebros*, which in the vulgar are express'd by *Decimas de precipuis* (for the Greek *δεκάτλις ἐν τοῖς ἀπορίτοις*) says *de precipuis prae Abraham Patriarcha Decimas legitur obtulisse*, directing himselfe still in the conceit of the word *All* in *Genesis*, according to that *apostolice* in the holy Epistle, which both in Translations enough, and in the Greek *c* Prouerbe before rememberd, denotes spoiles of Warre. Yet also the same Father soon after calls them *Decimas omnis substantiae suae* generally; but plainly shewing in his former words, that he took *omnis substantiae* here for nothing but *victorie pradam*. Which, it seems, *Philo* the *Jew* also vnderstands, where in his Anagogicall course of contemplation he saies that *Abraham* being the tenth degree from *Sem*, *τὸ δὲ δέκα τὰς δαπάνας χάρισται τῷ Νίκῃ ἀπειλόμενος*, that is, *consecrated Tenth* to the *Almightie*, as a *thanksgiving* for his *victorie*. And *Primasius*, an old *African* Bishop, interprets *de precipuis* in the *Latine* text by *de melioribus spoliis*. But some haue cauilled at my relating, according to S. *Hierome*, that were it not for the holy autoritie of the Epistle to the *Ebros*, it might stand indifferent whether *Abraham* gaue Tithes of the spoiles to *Melchisedek* as to a Priest, or *Melchisedek* the Tenth of his estate to *Abraham*, as a portion to one of his posteritie. If there be a fault in that assertion (I confesse I find none) let them be so bold then as to tax those learned Fathers for it, S. *Hierome* and *Eucherius*, beside *Freculphus* *f* Bishop of *Lisieux*, and other ancient Writers, that in the same syllables affirme it with S. *Hierome*, from whom indeed *Eucherius* transcribed the best part of his more notable passages. Somewhat may be here fitly remembred concerning two *Adiuncts* that belong to this *Storie* of *Abrahams* Tithing; that is, who *Melchisedek* was; and where the place of his *Kingdome*, or *Salem*, was. For the first, such of the Fathers *g* as out of the *Ebros* text had the true notes of supputation of time, take him to be *Sem*, according as the opinion also was generally receiued among the old *h* *Samaritan Ebros*, and diuers *iew* *i* also especially of later ages; howeuer some *Jews* haue been long since of another opinion, in their idle and rash fancies supposing him to be a *bastard*, which they tooke to be the cause why his descent is not spoken of with his name: others of them, with the *Hieracites*, making him *k* more then a man. But also both the *Hierosolymitan Targum*, and that other call'd *Ben-zietzels*, expressly tell



x In Elench. Orat.  
Chronolog. Dan.  
Paradi. 33.

y In lib. nepi  
A. 6. pad. 4.  
z Epist. ad Euzar.  
1074. 4.  
a In Epist. ad Ebr.  
cap. 7. 2.

b Ioban. cap. 3. 23.

c Vide Midras  
Tehillim, apud Ga-  
lanti de Arcanis  
lib. 2. cap. 9.  
d Genes. 14. 17.

e 2. Sam. 18. 18.

f Bredembach, in  
Peregr. 14. Iulii.

g Villamont dei  
Voyager. lib. 2.  
Cap. 12. 19.

Septuagint for *Iaphet*, makes so much against *Sem's* being the first born, that howeuer the great *Ioseph Scaliger* be \* most confident, that he was first in birth, as his name is exprest in enumeration, and giues his answers to the Chronologie objected against it; yet you may with more probabilitie take the more common and ancient opinion, that makes *Iaphet* the elder. Some will haue *Ham*. But I leaue that matter; supposing cleerly that *Sem* being *Melchisedek* (for, that one man should be denoted by severall names, is no noueltie in Scripture) was either the first born or had the right of it transferd into him by speciall blessing, and so was  $\delta \mu \nu \alpha \varsigma \alpha \rho \chi \iota \epsilon \rho \epsilon \upsilon \varsigma \tau \omega \text{ } \mu \epsilon \gamma \iota \varsigma \tau \omega \theta \epsilon \omega$ , as *Philo* 7 calls him, that is; the great high-Priest of the greatest God. For the place of his Kingdom, *Salem*; it is taken by \* *S. Hierom* (as he learned from some *Jews*) and from him by \* *S. Ambrose*, *Eucherius*, *Primasius*, and others that this *Salem* is that which seated on this side of *Jordan*, is some LXXX. miles distant from the plaine of *Mamre* where *Abraham* liued, and retains its name in the Storie b of *Ioban Baptisme*. and they say that the reliques of *Melchisedeks* Palace were there to be then seen. But the more common opinion of Christians in *S. Hieroms* time, was as now also of greatest Diuines, that *Salem* here and *Ierusalem* were the same. *Salem nostri omnes*, saith he and others of that age that follow him, *arbitrantur esse Ierusalem*. but himselfe was not of that mind, hauing as hee saith, learned the contrarie. But also, with those old Christians, *Iosephus* and some later c *Jews* expressly agree. and a good character of the truth of their opinion is in the holy Text. For, there the Kings Dale, whence the King of *Sodom* came out to meet *Abraham* in his return is d rememberd, as if it were close by where *Melchisedek* was. Now it is thought certainly that the place of *Abisalons* Pillar, that is, the Kings Dale spoken of in e *Samuel*, is no other then a Valley, which being hard by *Ierusalem*, is known to our age from *Abisalons* name; where yet, they f say, he hath a monument, and such as passe by, vse to cast stones at it in derestation of his disobedience. and also the very place where *Melchisedek* gaue *Abraham* the Bread and Wine, is, they say, yet known on Mount g *Caluarie*. But hitherto briefly of these two adiuncts of *Abrahams* Tithing. neither supposed I but that many which think of it for argument either way, would desire some satisfaction in them.

### Of the II. Chapter.

Hitherto could I neuer see any Christian that hath fully taught what was considerable in the generall payment of Tithes among the *Jews*. The Noble and most learned *Ios. Scaliger*, did not euerly way enough accurately teach it, although in a single Treatise he purposely vndertook it. How sufficiently among vs, others do that slothfully and ignorantly (without his help) while yet their end



is to writ of Tithes, talk of a *third Tithe* here, and a *fourth Tithe*, and indeed they know not what Tithe, let him iudge that shall hence know their error. This last spring Mart in the Title page of *Drusius* his Observations vpon *Iosuah*, and some other parts of the old Testament, a new discourse, *De Decimis Mosais*, written by *Sixtinus ab Amama* Professor of *Ebnewin Francker*, was promised; but I could neuer yet see any such thing ioind with that of *Drusius* or otherwise published. What we haue of them is as the great Doctors of the Jews haue deliuered in the *Talmud*, and their later Comments; which are testimonies beyond exception, for the practice or historicall part. For that in *g. 6.* of ἀποδεύειν τὴν δεκάτωσιν, out of *Epiphanius*; I rather think indeed that it denotes only a paying of Tithe, not a Tithing of what was alreadie tithed. It is well known that the language of the Greek Fathers, especially of about his time, is frequently mixt with phrases of the *Septuagint*. now they have ἀποδεύειν τὸ ἐκιδέχασθαι & δεκάτωσιν, for nothing but to pay a Tithe, which agrees somewhat with the *Hebrew* fashion of expression. and as they, so *Epiphanius* without doubt vnderstood it: howeuer some of great Names are of another mind. But to what is there toucht for the forwardnesse of payment of first Fruits among them, I here adde out of *i Philo* (who liud vnder the time of the second Temple, and spake of his own knowledge) that they were paid in such abundance, *ὡς καὶ τῶν ἀποροτάσων τῶν ἱερῶν ἐν κα περιόχας τροφῶν ἐσποράσων δοκεῖν εἶναι*, that is, that euen from the abundance only of first Fruits, heaue Offerings, or Therumahs, which were paid by the owner immediatly to the Priests, there was not a Priest in the XXIV. courses of them (so the Priests or Posterine of *Eleazar* & *Ithamar* were deuided *k* by King *Dauid*) but might be accounted a very rich or largely furnisht man. and he tells vs further that the Jews were so readie in paying them, that τὰς ἀπορίας θαυνοῖς, τὰς προδεσμίας ἐπιτίμωνοις, λαμβάνειν ἀλλ' ἢ διδόντας νομίζουσιν, μετ' εὐχαρίαι καὶ εὐχαριστίας καὶ ἐκδελν τῶν ἐτιμῶν ἀρῶν περὶ τὰς ἐσποράς ἀνδρες οὐκ καὶ γυναικες ἀντοκαλεῖσθαι προθυμία καὶ σπουδῇ πάντες λόγῳ κρείττοισι, that is, They prevented the Officers demanding them, paid them before they were due by Law, and as if they had rather taken a benefit then giuen any, both sexes of their own most forward readinesse in euery first fruite season brought them in with such courtesie and thank-giuing as is beyond all expression. All which is spoken only of first Fruits and Therumahs, not of Tithes, as it is falsly in the Latin translation; where ἀποδεύειν alone is ignorantly vnderstood for Tithes paid by the Laity to the Priests: the truth being that the Laity paid only first Fruits, not Tithes, immediatly to the Priests, but only to the *Leuit*, that is, those which were, as *Philo* saies, ἐν δευτέρῃ τάξει, that is, in the second rank, and ψαλμοποι, or as Wardeins, Huithers, Singers, and other such Ministers. And the *Leuits* paid the Tithe of their Tithe to their Priests, who so through the *Leuits* receiud Tithes

*h* Genes 38. 26.  
*Deut.* 26. 12.

*i* Lib. περὶ τῆ  
τινα γὰρ  
ἱερῶν.

*k* 1. Paralip. 24. 4.

our of the possessions of the Laitie, as also the holy Auctor to the E-  
 brews is interpreted, where he saies, *That those of the sonnes of Levi that*  
*had receivd the Priesthood, had a commandement to take Tithes of the people*  
*according to the Law.* For the posteritie of *Aaron* that had the Priest-  
 hood, receivd none from the people, but immediately and through the  
*Leuits.* In the same holy Epistle their continuance of payment of  
 Tithes (which as long as their Priesthood *de facto*, and the politique  
 for n of government, instituted by the Almighty, continued, was e-  
 uen *ex conscientia* to be performed, as some<sup>l</sup> teach) is also manifested  
 after *Philo's* time. The Jews are told in it, that *here men that die receive*  
*Tithes, but there he of whom it is witnessed that he liveth.* that here, being  
 plainly refered to the vie of the Jews (to whom the Epistle was sent)  
 vnder the second Temple. So *Primasius* an old African-Father inter-  
 prets it. *Hic inquit, saith he, hoc est in presenti seculo, vel in Templo quod*  
*adhuc stabat, Morientes homines, filij videlicet Levi, qui mortales ac mori-*  
*bundi sunt, Decima accipiunt.* But about this time also it appears in  
 Storie that Tithes were still paid by the *Leuits* to the Priests, which  
 supposes the peoples payment to the *Leuits*. remember that of *Fl. Iose-*  
*phus*<sup>m</sup> where he tells, that when *Falix* was Lieutenant of *Iudea*, such  
 a tumult and sedition happend twixt the high Priests (*ἀρχιερεῖς*) and  
 the rest of the Priests, and the chiefeest of the Laitie; that the high  
 Priests to satisfie their malice vpon the rest of the Priests, violently  
 took away the Tithes that were kept in Granges and Barnes for their  
 maintenance, and in so much wronged them that some of the poorest  
 of them euen died for want. this was about the beginning of *Nero*;  
 and <sup>n</sup> *Eusebius* and <sup>o</sup> *Nicephorus* relating it from *Iosephus*, refer it to him.  
 although *Ruffinus* in his translation of *Eusebius* rather place it vnder  
*Claudius*, but vnder both, *Falix* was Lieutenant. By the way you may  
 note that in *Nero's* time, diuers of the Priests were grown much poo-  
 rer then they had been lately before; if *Philo* be to be credited, who  
 liued also but little before *Nero's* Empire. It was very hard with some  
 of them (it seems) that the taking away their Tithes only should  
 starue them. Those high Priests here spoken of, are such as were the  
 chiefeest of the XXIV. Orders. for <sup>p</sup> so also were the Priests deuicd.  
 There was neuer but one high Priest properly, and that according to  
 the first institution. but others that had a supremacie among those or-  
 ders, were also called so, as both here, and in a holy Writ. and they  
 were, to the high Priest, as the *ἐπίσκοποι* in the Eastern Patriarchs  
 which are as Suffragans to exercise the Patriarchs office in his ab-  
 sence, or as the Bishop-Cardinals in *Rome*. and the first and chiefeest  
 of these high Priests in the plural number, was as a designed succe-  
 ssor to him that properly bare that name, and was his Prime Vicar,  
 chief Suffragan, or the second Priest, as <sup>r</sup> *Zephaniah* was to *Seraiab*,  
 and as *Annas* to *Caiphas*. For so the most learned vnderstand that of  
 them two, being high Priests together in the Gospell. but this by the  
 way.

l Videfis Suarez  
 de Legibus lib. 9.  
 cap. 19. §. 16.

m Archaeolog. lib.  
 20. cap. 6.

n Eccles. Hist. lib. 2  
 cap. 20.  
 o Lib. 2. Eccles.  
 Hist. cap. 26.

p 1. Paralip. 24. 4. 5

q Vide D. Marth.  
 26. 57. & 59.

r Videfis Scalig.  
 in Prolagon. ad  
 Chronica, Eusebii.

s 2. Reg. 23. 18.

way. yet who knows it not, may soon stumble at the Storie; and, if not admonish'd, trouble himselfe with as good a disquisition about it, as that Abbot *Paschasius* long since fell into about what follows out of *Saint Matthew*, in the 7 §. where the strict payment of Tithes vsed among the Scribes and Pharisees is spoken of. He being too ignorant of the particulars of the Jewish state, doubted much how the Scribes and Pharisees should so pay their Tithes, *cum ipsi* (as his words are) *Sacerdotes erant & Levite qui magis accipiebant Decimas à populo quam darent.* But I wonder what made him so much as dream so, indeed he answers himselfe also But plainly the Scribes and Pharisees, as known by that name only, had no more reference to the Tribe of *Leui* then to any other of the Twelve. Children in the holy Text or the Jewish storie, know it.

That generall rule of their Lawiers in the same §. taken out of *Rabbi Ben-Maimon*, is first in their *Talmud*, where also the *Gemara*, that is, the following opinions of their Doctors, hath many speciall cases of this or that fruit or encrease of the earth; but often lieth to the purpose. one thing their *Mishnah* or Text addes further to that rule; that is, whatsoeuer fruit or herb is fit to be eaten, both while it is yong or new, as also when it is at full growth, must pay Tithes aswell when it is yong, as at full growth. but if while it be yong it be not fit to be eaten, *אין חיוב ער שיעשה איכל* that is, it is not subject to tithes until it be come fit to be eaten. That in §. 8. of them that take the profits of Land among the *Samaritans*, or in *Aram*, that is, *Syria*, must be vnderstood of a lew dwelling among them, and tilling the Land there. For regularly if the fruits of Lands in *Syria* were taken by a lew, residing still in his own Countrie, he was to pay ½ Tithe of them.

Touching their Tithing after the second Temple destroyed; although for want of a Temple and Priesthood at this day, they Tithed not legally, yet among their Aphorismes both diuine and morall, they tell vs, that as the *Masoreth* is the defence of the Law, so *מעשרות* *כיג לעשר* *maishberoth seag laishber*, that is, Tithes paid are the defence of riches. Whereupon one notes, that at this day *qui religiosiores sunt inter Iudeos, loco Decimarum, elemosynam pendunt de omnibus Liris; decem aureos de centum, centum de mille &c.* But howeuer the deuouter of them may giue such almes, it is plain that their Legall Tithing hath now no place among them for want of a sufficient Priesthood and Temple or Tabernacle. yet without doubt, most of them haue long since expected a third Temple. otherwise why were they so carefull to haue their Laws and speciall cases of first Fruits and Tithing, so copiously deliuered in five whole *Massecheths* of their *Talmud*, or body of their Ciuill and Canon Law, which was, many years after the destruction of the second Temple, made for the direction of the dispersed of their Nation?

Now, me thinks, he that argues for Tithes from the Mosaicall Laws

*t Paschas. Ratbert.  
Abbas Corbense. in  
Matth. lib. 10.  
pag. 591.*

*u Seder Zeraim  
Masse. Maishb.  
Perak 1. §. 1.*

*x Talmud. dist.  
Seder. Maish. De  
mai Perak. 6. &  
Masse. Maishb.  
Perak. 5. §. 5.  
y Pirke Aboth.  
cap 3. & not  
adieck.*

*z Videfis Gale-  
tiu. de Arcanu  
lib. 5. cap. 9.*

Laws of Tithing, had need more specially, then any I haue yet seen hath neer done, examine which of the two kinds are due in the Euangelicall Priesthood. Why not the second as well as the first? and further consider also how the payment of Tithes from the Laitie to the Priests of the Gospell, succeeds to the payment from the *Lewits* to the sonnes of *Aaron*. But these considerations can only be, where the knowledge of Fact precedes. for without exact Distinction of their seuerall Tithes, any argument drawn from them, may soon be found a grosse fallacie, that may both deceiue him which makes it and those whom he teaches. Let the ingenuous Reader thinke of it.

But one thing more here by the way. So much either ignorance or neglect in the disquisition of what belongs to the Tithes of the *Lews*, hath possesst some great names, that, touching the proportion of the Tithes and the Receiuers, they haue rested fairely satisfied in this; that the *Lewits* being one of the twelue Tribes, had the Tenth as a competent maintenance to themselves, being neer the Tenth, that is, being the twelfth part of the people; as if Arithmetically the People and the Reuenues had been so deuided. But others haue long since easily shewd the slightheesse and falshood also of this fancie. And cleerly, had such a neer proportion of persons and the name of Tenth held; yet examine all that was paid to the Priests and *Lewits* in first Fruits and the seuerall prediall Tenth only, and it will be neer a fift. and we here omit also the Cities and Suburbs assigned to them, and their other many profits out of Sacrifices, ransoms of First-born, and the like. But for that proportion of number twixt the Tribes, wee haue sufficient testimonie in holy \* Writ, that it was farre otherwise. The able men for armes of the eleuen Tribes were numbered to 603550. and these all of XX. years old at least. the Males of the *Lewits* from a month old were seuerally found to be but 11273. for so are the particulars of the Families of *Gershon*, *Kath*, and *Merari*. Here then the *Lewits* reckond, with aduantage of all their Male children of aboue a month old, make not a  $\frac{1}{2}$ . of the rest of the Tribes, had the rest been accounted also with all their Males of like age, it is probable enough that the Male *Lewits* would not haue equalled a fiftieth or sixtieth part. as in the one sex of them, the coniecture may also be in the other. and afterwards likewise\* in *Dauid's* numbering, wee see the *Lewits* of 30. yeer old were lesse then  $\frac{1}{2}$ . part of the rest of *Israel* and *Juda*, that were able to bear Armes. Where then is any thing towards proportion twixt the number of the Priests and *Lewits*, and the denomination of the Tithes? Neither is it to any purpose or consequent to look after any such thing. I rest in this; that it pleased the Almighty so to enrich that Tribe, which was reserued only for the holy Seruice in the Temple. Why he did so, or with what proportion, let them, for me, examine, who dare put their prophane fancies to play with his holy Text, and so most impudently and wickedly offer to square the one by the other. Of

\* Numer. cap.  
L. 3.

\* Vide 1. Sam. 34.  
9. 1 Paralipom. 23.  
3. & 27.

## Of the III. Chapter.

IN it, largely out of originall Autors of Greece and Rome, is shewd the vse of Tiching among the Gentiles. farre more largely then by any that hath yet toucht it. The truth also, wherein too many are either obstinately or ignorantly blind, touching that of their supposed generall paiment, collected out of a corrupted place in *Festus*, or rather in *Paulus Diaconus*, is declared and brought to its own limits. neither will any iudicious Reader doubt of the corruption of *Festus* in that place. whosoever knows but the fashion of his writing (which must be obserued in that of his own, after the XI. book, partly yet remaining in his very words) cannot at all think that *Decima quæq; veteris Dyis suis offerebant*, should be deliuerd by him. he is in all other things more curious. he would not haue talkt of *Dyis* generally or *quæq;*. But it was no such wonder that *Paulus Diaconus*, who ignorantly abridgd him vnder *Charles* the Great, should say so; being, as the learned acknowledge him, no small enemy to posteritie, in so cutting and maiming him. he was (saies \* the noble Scaliger) *Homo meo iudicio confidentissimus ac, uti res ipsa docet, ineptissimus*. Had he delt with *Festus*, as *Festus* did before with *Uerrius Flaccus*, it had been tolerable. though by *Festus* perhaps we haue lost much of *Flaccus*, yet he appears iudicious enough and carefull in what he deliuers from him. But this *Paul* (being, I confesse, otherwise a man of great reading and knowledge for the time he liud in) hath not only here by coniecture, but in other places most plainly so exprest things of this nature, that is, touching the Theologie or Rites of the Gentiles, that, had we not found some pieces of *Festus* himselfe, posteritie might haue been perpetually blinded by him. No man will denie it that obserues but his words, *Malenoli, Nixi Dy, Præclamitatores, Nauis*, and diuers other which, compar'd with what is left of *Festus* whence he had them, appeare to bee either mistaken or falsly deliuerd. But for the Gentiles; it is true, they were very deuout in giuing of their yearly increase to the honor of their Deities, according as the Attique Law receiud, as is thought, from *Triptolemus*, and seconded by \* *Draco*, commanded. that is, *Θεὸς ἀδποῖς ἀγᾶλλειν*, that is, *To honor the Gods with their fruits*. witness enough of the *Grecians* is found in their *Trochysia* that was the feast immediatly after Haruest, wherein they spent b much of their fruits in honor of *Ceres*; in their *Halua* about the same time which was c the like deuotion to her and to *Bacchus*, and in their severall *Dionysia*. all which spent no small part of their yearly fruits of Wine and Coine; that we may omit their other feasts of lesse note that are to this purpose. And among the *Romans*, was a like forwardnesse to consecrat part of their Coine and Wine to the Gods; as we see in their *Sacrima* d that is the first of their Must, spent in the honor

b

of

\* In Epist. newch.  
par. ad I. Monu-  
cium.

a *Hermippus apud Periphrasim*  
*πρὸς ἀποχρῆς*  
*ἐκ τῆς lib. 4.*  
b *Theophrastus lib. 11.*  
c *Enstath. ad*  
*Ilad. 4.*  
d *Festus in hisce*  
*vac. ad quem vide*  
*Ios. Scalig. & in*  
*Contest. ad Varro-*  
*nis de L. lib. 5.*

of *Bacchus*, their *Culpat* or the first and best of their Wine, as it was when they first began to draw it, sacred to *Iupiter Dapali*, their *Præmessum* or *Præmetium* before Harvest, their *Florifectum* after Harvest, both bestowed in honor of *Ceres*, and the like more to her and to *Iupiter*, *Ianus*, and *Bacchus*; that we may omit their *Robigalia*, *Solitaurelia*, and the rest of such kind. But all these plainly were at the libertie of the Owners. and so was it expressly denoted in the rituall words of sacrificing of their new Wines. as \* *Maſſe*, or *Maſſus Iupiter hoc vino inferio esto*, as if they had said, *Be honord Iupiter with this Wine, which is as much as I can spare thee*. for so much is in substance denoted by *inferio*, that is, *Vino quod inferitur*. and therefore was that word *f* added because all the rest might be free from Religion after this were so severally sacrificed. For vntill the Sacrifice, all the Wine remaind so sacred that it might not lawfully be medled with for common vse. But the owner might by such arbitrarie giuing his *Inferium*, discharge it of being any more sacred. and thereupon saies *Arnobius*, lesting at their Ceremonies, *Maſſus hoc vino inferio esto quid est aliud quam dicere, tantum esto maſſus quantum volo; tantum amplificatus quantum iubeo; tantum honoris assumpto quantum te habere descerno, & verborum circumscriptione desinio*. O *Deorum sublimitas prepotens &c. quæ per unius formidinem verbi ab immediâ vini cupiditatibus arcetur!* Among all these feasts not any mention is of a Tenth or any certain part. But the Tenth came sometimes only at the will of him that had good fortune or *post rem bene gestam*, as *Servius* his words are. So *Hersennius* who had been a Piper all his youth, and doubting the successe of that Trade, fel thence to be a Marchant, and then *re bene gesta Decimam Herculi dicens*. That consecrating vse to *Hercules* was most vsually made with solemnitie at that *Ara Maxima*, neer the *Forum Bovium* or the Ox-marker, vpon which, some <sup>h</sup> say, but fabulously enough (as the rest of these particulars are deliuerd) that *Hercules* himself first spent the Tenth of what he took from *Cacus*, in a iolly Feast, with *Euander* and the rest that honord him for it. and vpon that Altar, saies *Halycarnassens*, *δευατερος δὲ χερμαίων γίνονται συχαὶ κατ' εὐχάς*, that is, *Tishes are there frequently offered by vow*. But the paiement of that vow was commonly in feasts made in honor of him; and those feasts were, it seems, in ancienter time, vntill the Vow was performd, celebrated within euery ten daies by such as were so religious to him. and in that diuision of time, for the more conueniencie of entertainment, his Tiche was merrily spent; and the guests alwaies sent home crown'd with Baies in honor of him. So I vnderstand that of *Varro* <sup>i</sup> when he tells vs, *Maiores solitos Decimam Herculi vouere, nec decem dies intermittere quin polluerent ac populum ἀστυκόλον cum corona laurea dimitterent cubitum*. and of this kind of Feasts were those Dinners of *Orestes*, spoken of in <sup>k</sup> *Cicero*. *Orestis nuper prandia in semitu Decumæ nomine magno honori fuerunt*. It seems their vow both of Gain and of Spoiles of Warre, was made to him.

e *Cato de re Rustica* cap. 132.

f *Trebatius apud Arnobium aduersus Gentes* lib. 7.

g *Ad Aeneid.*  
c. 6. v. 50.

h *Halycarnassensis*  
*Πομπ. Αρχαιολ.*  
α.

i *Apud Macrobinum Saturnal.*  
lib. 3. cap. 11.

k *De Officiis*  
lib. 3.

him chiefly as he was their God of Warre or of Defence. For it is cleer not only in the old *Roman* Diuinitie or Mythologie, that *Hercules* specially was accounted *Mars* (as is plain by their Moniments, which shew that the Institution of the *Sacra Salaria* were indifferent to *Hercules* or *Mars*, and made to one Deitie vnder those two names) but also by the old *Astronomie* wherein the Planet *Mars* was likewise called <sup>1</sup> *Hercules*, and that not only by the *Chaldeans* (as *Macrobius* too rashly affirms) but also by the *Egyptians*, from whom the knowledge of the Heauens came into *Europe*. For howsoeuer it be noted out of an old Glossarie at the end of that most learned work of the noble *Scaliger* vpon *Manilius*, that *Mars* was called among the *Egyptians* *Pycnos* (suppose the Northern *Egyptians* about *Alexandria*, where they spake Greek before the *Roman* Empire and afterward) and although some other old testimony, say they, stiled him *Aptus* (not *Apus*) yet *Archibius* states that was an *Egyptian* saies expressly, that *Pycnos* is the Greek name of *Mars*, and that in *Egypt* he was calld the starre of *Hercules*. So the Autor of that *περί κόσμου*, attributed to *Aristotle*; δ *Πυρόν* ὁ *Ἡρακλῆς* τὸ καὶ *Ἄπρος* προσαγορευόμενος, that is, *Pyrōn* being calld both *Hercules* and *Mars*; which *Apulleius*, because *Hercules* was not so common a name for it, thus turns, *Quem multi Hercules, plures Martis stellam vocant.* and his common titles in old Inscriptions iustifie the same. *Invictus, Victori, Defensori, Pollenti*, and such more are frequently his additions, being proper to *Mars*. and vnder some such Title was he worshipt almost in euery Citie of <sup>o</sup> *Italie*. and I would *Varro* had rather here sought the cause of his title of *Victor* then in that ridiculous reason which he brings, *Quod omne genus an malum decies vicerit.* had he said that therefore also his Tithe was given him because of *Decies*, he had spoken as probably and as wisely. Indeed it is a wonder to see a man of that abstruse learning and great abilities, that *Togatorum Doctissimus*, to be so childish as he often is, in unhappily troubling himselfe about deriuations. But of *Hercules*, enough. Beside that of the maritime *Pelagii*, in §. 1. the other of them that feared themselves further into the Land in *Vmbria*, being oppressd with a sterile ycer, vowd the Tenth, *δεκάτας τῶν προσγενομένων ἀπέναντον* that is, *The Tithe of all that should encrease to them*, to *Iupiter*, *Apollo*, and the *Cabiri*, and this they paid also. but they were admonisht by *Apollas* Oracle, that their vow was not performd vntill they had sacrificed also the Tithe of their children. which was done also. But now see (when you truly know the ancient Tithing among the Gentiles) how well they conclude here that draw arguments from the generall Law of Nature or Nations, as if by that Law any such vse of payment of Tithes had been established among them, as was continuall or compulsoe.

1 *Plin. Hist. lib. 2. cap. 8.*

m *Uersus Valens Antioch. lib. 6. Antioch. M. Sed verba eius repetuntur in Synagoga.*  
 1. *De Diti Syri cap. 6.*  
 n *In Arati Planetomena.*

o *Halicarnass. Popu. d'ερχασολ. α.*

p *Apud Strabonem ad AEned. 8. eorum. 30.*

q *Myrsinus Lesbios apud Halicarnass. Popu. d'ερχασολ. α. citatur Historia etiam apud Eusebium in λεγ. τριακοτάσι μισί.*



## Of the IV. Chapter.

THat which succeeds is only of Christian *Practice, Laws, and Opinion*. Which, any man that sees but the course of our diuision, may easily know; though he were as peruerse as he was that to confute me in assertion here of *no proof of payment of Tithes, till towards the end of the first CCCC. years*, confidently brought that Text of the holy Autor to the *Ebrews*, *Here men that die, receiue Tithes*: and was readie to sing *decidit in casses &c.* as if that had proued a payment in the Apostles time. indeed it proues a payment among the Ebrews or Jews then, and also is seconded by other autoritie before touched: but any reference there had to a Christian practice of Tithing, I suppose no man will affirm that is of a sound brain, and vses holy Writ with due reuerence. But my application of some passages in *S. Cyprian* in §. 1. here are found fault withall; in that I vnderstand not his mention of the word *Decime* to be a note of payment of Tithes in his age. Indeed I did not think that any man which vnderstood *Cyprian*, with the vse of his time in making vp the Ecclesiastique Trefure, would haue therein taxed me. Neither haue I giuen his words alone & then my own Glosses (as many haue done too often, and that in things of the nature of this subiect, and so haue deceiud their credulous Readers) but I haue carefully and shortly exprest also the occasion of his passages; and so, that an vnderstanding Reader may collect as much out of them as he might do if he had the whole context of *Cyprian* by him. If I haue errd in the interpretation, it is but my single error and theirs that dare giue autoritie here to my iudgement. whoeuer can think otherwise by *Cyprians* words, if he saw him, may equally do so by my relation. howeuer then, I impose not on any Reader. But for that second place of his out of his *De Vnitate Ecclesie*; obserue his words more fully. Thus they are. *Domos tunc & fundos venundabant & thesauros sibi in calo reponentes, distribuenda in usus indigentium pretia Apostolis offerebant. At nunc de patrimonio nec Decimas damus; & cum vendere iubent Dominus emimus potius & augemus.* So farre is this from denoting any payment of Tenths of annuall increase (which is the Tithe we enquire after) that indeed no such Tenth seems here to be vnderstood in the mention of *Decime*. he speaks of them which sold their whole estates in the Apostles times. but now, saith he, we giue not the Tenths of our patrimonies. that is, we giue not the Tenth part of what deuout Christians then did, but in stead of selling for deuotion, we buy and increase our estates. What other Tenth is here spoken of then the tenth part of euery mans patrimonie or estate? and what hath that to do with the tenth of Annuall increase only? and, for any vse of payment in this time: I was not so bold to make the negatiue, that *no Tithes were paid*, but that it could not be proued that any were.

He

He that can shew me aught omitted that might proue it, shall deserue and haue thanks of me. In the mean time further to iustifie what I affirm, take this of *Epiphanius* Bishop of *Constance* in *Cyprus*, that about the year C C C. L X X X. wrote against the Heresies of the primitive times. when he tells vs of the *Tessaresdecasite*, or those which thought the holy Easter must be kept on the fourteenth Moon, according to the Law giuen to the *Jews* for their Pasche, and that because they apprehended that the keeping it otherwise was subiect to the curse of the Law; he saies, that *πᾶσα ἔχουσιν ὁς ἡ Ἐκκλησία*, that is, they do all things or agree generally with the Church, sauing that they were too much herein addicted to the *Jewish* custom. and in his argument against them, he shews, that the curse hath not reference only to the Pasche, but also to Circumcision, to Tithes (*πρὸς δεκατώσεως*) to Offerings. Wherefore (as he goes on) if they escape one curse, by keeping their Easter according to the Law of the Pasche, they thrust themselves into many other. For (saith he) they shall find them also cursed that are not Circumcised, and them cursed that pay not Tithes, and them cursed that offer not at *Ierusalem*. Let any man now consider if this Bishop that was least vnacquainted with the customs of the Christian Church, vnderstood not cleerly that no necessarie or known vse of payment, was among Christians in his time, of Tithes, no more then of Circumcision, or offering at *Ierusalem*. Doubt he not plainly reckon it as a thing not only not in Christian vse, but euen equals it with what was certainly abrogated? is not his Obiection shortly thus? Why do you not obserue Circumcision and Tithing, and Offerings also at *Ierusalem*, which are all subiect to the like curse? and because some kind of Offerings indeed were in vse among Christians, therefore in the Obiection he prouidently ties them to *Ierusalem*. But of Tithing he speaks as generally as of Circumcision. Obserue his own context, which I here giue, that the able Readers iudgement may be free. *ὅτε οὐκ ἔστι μὴν κατὰ τὴν περὶ νόμον, εἰς πόλλας αὐτῶν ἐνέτιπται. Εὐρεθίσοντες γὰρ ἐπικατάρατοι μὴ περιλειψόμενοι ἐπικατάρατοι μὴ ἀποδεχόμενοι, καὶ ἐπικατάρατοι γίνονται μὴ εἰς Ἰερουσαλὴμ προσφύγοντες*, that is, So that if they avoid one curse, they fall vnder many other. For such shall be also found accursed as are uncircumcised, such accursed as Tithe not, and they are also accursed (in the old Law) that offer not at *Ierusalem*. I confesse, this may perhaps seem not to extend to the *African* Church (wherein *S. Cyprian* and *S. Augustine* liued) that was farre remote from *Epiphanius*, being of the *Greek* *Eastern* Church, and so not to sufficiently proue that in those times no payment was in vse there, the like perhaps may be obuiously thought of in referring it to the *Western* Church of *Europe*. But it seemes that the *African*, *European*, & *Eastern* *Greek* churches of those times, had little or no difference twixt them in the settled policie for their maintenance. And for the *African*; howeuer out of *S. Augustines* Sermons it may be collected,

f Harp 50.

that a payment soon afterward was there in use, yet herein both the Greek Eastern, and the African Churches are specially so like each other, that neither in the Councils or Canons of the one or the other of them, any Law at all is found for payment or ordaining any thing touching Tithes; nor as I remember, doth the name of Tithes once occur in them, or in Photius his *Nomocanon*, or in Zonaras, or Balsamon, the chief Canonists that writ on the Eastern Canons. I mean here the Canons of the Greek Church of credit; not including those called the Apostles Constitutions equally belonging to all Churches (if vnder that name to any) of which more presently. But it had been litle to the purpose indeed to haue had Tithes of Annuall increase paid, while that most bountifull deuotion of good Christians continued in frequent Offerings, both of lands and goods to such large value, as you see express in that of the Gouvernor of Rome to S. Laurence (being Archdeacon to Pope Xistus the second) in the ninth persecution vnder Decius. he tells him that the common fame was that the Christians did often

ε. apud Prædium  
 περί σφάγαν.  
 l. γινω, 3.

*Offerre, fundis venditis,  
 Sestertiorum millia.*

And that

*Addita aurorum prædia  
 Fædis sub auctionibus,  
 Successor exheres gemit  
 Sanctis egens parentibus.*

*Et summa pietas creditur,  
 Nudare dulces liberos.*

no doubt can be but that the Gouvernor is here made to speak somewhat beyond the truth. but also questionlesse the liberall deuotion of the time was very exceeding in Offerings.

But, for Constitutions of this age; lest we should seem to omit any thing that bears the name of one, although meerly supposititious, we shall here adde more to that cited in the 4. §. out of the old *Clementines* attributed to the Apostles. but all will be of equal credit. and were it not for the inequality of Readers, none of it indeed deserued a place here. In those *Clementines*, a further command is, to giue u all thy Tithe to the Orphan, to the Widow, to the Poor, and to the Stranger. and afterward some Constitutions attributed to S. Mattheu are inserted; wherein first is ordaind the formall consecration of Oile and Water, that may haue power to heale sick men, to cast out Deuills, and the like, with 'Εγὼ Ματθαῖος διατάσσω, that is, I Mattheu ordain, and then ἡς προδωκεν τὰς αὐτὰς ἀπαγγέλλει προσηκού-  
 ζεσθαι τῷ Ἐπισκόπῳ καὶ τοῖς Πρεσβυτέροις καὶ τοῖς Διακόνοις ἐν δια-  
 τροφῇ

υ Διατάζει  
 τῶν ἀποστόλ.  
 βίβλ. ζ. λα. &  
 η. καὶ. λ.

τροφῶν αὐτῶν &c. πᾶσαν δὲ δεικνύω προσφέρειν εἰς διατροφήν τῶν λοιπῶν κληρικῶν καὶ τῶν παρθένων καὶ τῶν χηρῶν καὶ τῶν ἐν πενίᾳ ἔχοντων; that is, I further ordain, that all first fruits be brought to the Bishop, and to the Priests, and to the Deacons for their maintenance. and that all Tithes be offered for the maintenance of the rest of the Clergie, and of Virgins, and of Widows, and of poor People. but here is no command of Tithes to be given to the Priests for their use; but only for maintenance of the lesse Orders of the Clergie and of the Poor. and therefore these Constitutions still agree with themselves. But, for the autoritie of them; take the iudgement of our Church, and I think you shall haue a generall consent in this, that they are not of neer the Apostles time, but counterfaits of a far later age. and great men in the Church of Rome account them no other wise, howsoever Turrian (that first published them in Greek out of three old copies, as he saies) would needs perswade the world that they are genuin, Apostolique, and collected by Pope Clement the first. But I would then he had also perswaded vs that the Apostles had taught that the Birth of our Saviour or Christmas day, was to be celebrated on the XXV. day of December, as in this suspicious \* Clement is affirmed. The learned know that vntill about CCCC. yeers after Christ, that is till S. Chrysostoms time, that day was not settled but variously obserued in the Eastern Church, which should haue had speiall notice of the Apostolique Canons. and S. Chrysostom then learned the time of the XXV. of December (which yet, most thinke not to be the exact time) from the Western or Latine Church. is it likely that till then, the Apostles Constitutions had slept? Besides, we see, that Dionysius that great Patriarch of Alexandria, although those of his See and himselfe were most curious in the determinations of Ecclesiastique times, could not find whence cleerly to resolve that question to Basilides Bishop of Pentapolis, καὶ ὡς ὅταν ἀπομνήσκηται δὲ τῷ τῷ πάσχα ἡμέραν, that is, At what houre after the last Saterday of Lent they should leaue of that strictnesse of Fasting, in ioy of the Resurrection. or at what iust houre Easter day, or the feast of the Resurrection should begin. Basilides tells him, some thinke at the Cocks-crowing towards the morning, some at the Sater-day evening. and Dionysius acknowledges that difference in use. but to set a certain houre of it, he answers him, is καὶ δύσκολον καὶ σφαλερὸν, that is, both hard and without sufficient ground. and then falls to examine it by the holy Historie of the time of the Resurrection. But had these Constitutions been then in autoritie, cleerly Dionysius might soon haue resolved the question. for in them it is determined, that this strict fasting should be kept, but μέχρις ἀλευροπορίας, that is, vntill the time of Cock-crowing. This learned Patriarch (his Greek Epistle neuer yet published in Greek, with Balsamon vpon him, was communicated to me by that most learned and courteous Mr. Patrik Yong, in the rest of Balsamon Ms.) liued about CC. yeers after the supposed time of the collection

x Lib. 5. Canon. 13.

y Vide Clement. Alex. Strom. 2. Epiphani. Hæres. 51. & D. Chrysost. hom. ἐν τῷ γὰρ ἡμέραν.

z Apud Th. Balsamon Ms. in Bibl. Patrij. Iuvni. a Videlicet (si hanc rem obiter velis explicatorem) Synod. 6. in Trullis Canon. 99. & ibid. & alibi Dionysij Epistolam, Theodorum Balsamonem & Euseb. lib. 5. Eccl. hist. c. 23. &c.

b Lib. 5. Canon. 18. &c. 19.

collection of these Constitutions, and surely had vsed them if they had then at all been, and deferred credit, and who would haue made a controuersie about the holding of Easter, that had in those elder times found it so established as it is in those Constitutions. But it is not difficult to coniecture out of what kind of shop they came, if you but note the supremacie of all power so arrogated in them to the Clergie, the Autors of them command that Priests be honored as Kings and haue tribute paid them as Kings, and are so bold as to apply that in *d Samuel*, touching what a King would do in taking from his Subiects, to the power of Bishops, as if they should do so. and they affirm it, as much more reasonable, that Bishops should do so; and ordain also with *διαταγόμεθα*, that is, *We constitute*, the like wholly *πρὸς Ἐπισκόπων*, that is, *touching Bishops*, as there, they say, is ordaind *πρὸς Βασιλέων*, that is, *touching Kings*. which well agrees also with their reckoning vp of the ten Commandements, and making the Tenth to be *οὐ ἐμφανὴς παρὰ τοῖς ἱερεῦσι κερδεῖ*, that is, *Thou shalt not appear empty before the Priest*. He that made these words to fill the place of one of the ten Commandements, seems not to talk like one of the Apostles. A thousand things more might be found to disprove the autoritie that some attribute to these Canons. and the answer to *Turrians* reasons for maintenance of them, are obuius enough. For my part, I think confidently that most of them, if not all, are hardly M. yeers old; and therefore no sufficient cause is, why they should haue place of credit in any part of our Diuision, as they bear the name of Canons or Constitutions. For if they were in truth made so long after those whose names giue them all their autoritie, they are all one, for Constitutions to be relied on, as if they had been but of yesterday. I only toucht part of them in this first CCCC. yeers, as they were in the *Latia*; the *Greek* being neither then by me nor much materiall; although some passages in other translations and to this purpose, if not examined by the *Greek*, may soon deceive a Reader of too readie a faith. For one of those other Canons attributed also to the Apostles as Autors, and to this *Clement* as Collector, is translated, *Aliorum Decima primitiue fructuum omnium mittantur Episcopo ac Presbyteris, non super Altare*, the *Greek* that is turnd and set by the *Latin* in the same Volume, hauing not a syllable of Tithes, but speaks only thus. *Ἡ ἅλη πάντα ὡπώρα ἐς τὸν ἀποστέλλεσθαι ἀπαρχὴ τῷ Ἐπισκόπῳ καὶ τοῖς πρεσβυτέροις ἀλλὰ μὴ πρὸς τὸ θυσιάζειν*, that is, *Let all other fruit (being vsrj fruit:) be sent home to the Bishop and to the Priests, but not brought to the Altar.* the meaning being that only first fruits of new grapes before Vintage-time, or of yong herbs fit to be eaten, or such like (comprehended vnder the words *νέων χρίσμων*, in the next Canon before) should be brought to the Church. and so are the expositions of *Zonaras* and *Theodore Balsamon*, two great Canonists of the Eastern Church.

e Lib. 2. Canon. 39.

d 1. Sam. cap. 8.

e Lib. 3. Can. 36.

f In Zonara edito  
a I. Martino  
Can. 4.

## Of the V. Chapter.

**T**Hose Abbots spoken of in the 1. §. were not of the ministring Clergie properly taken; but only principall Gouvernors of such as had chosen a separated and single life; such as are in good number found in *Palladius his Lausaca Historia*, *Cassianus*, and the like more. For that of giuing Tithes to the vse of the Poor; it seems it must be vnderstood that they were most commonly giuen into the hands of those Abbots or some of the Clergie for their vse. and that they dispensed them. which may be collected out of the testimonies of that age wherein the goods and treasure of the Church is accounted but as the Poores chiefly in propriety. Beside those attributes of Tithes and other things consecrated, as *tributa egentium animarum*, and *patrimonia pauperum*, and the like, an obseruable admonition is, to this purpose, found in *Isidore Pelusiota* (that liud about the beginning of these CCCC. years) made to one *Maro* a Priest (whom he often reprehends) but specially for not leauing the goods of the Church and of the Poor (that is, what was offered in Tithes, Rents, and other bounties) to be kept only by the *Oeconomus* or Dispenser, or Steward (who in those times receiued them for the Bishop, and dispensed them by direction of him and his Clergie) but carried them home to his own house. Παῦσαι τῆνυσιν (saies he) τῆς ἀσβείας. Οὐκ ὀνομαστέον εἶρηται παρὰ τὸ δικαίωμα αὐτῶν ἔμεναι τοῖς πτωχοῖς. Οὐκ εἶσα δὲ αὐτῶν ἐκείνους τὰ ἐκκλησιαστικά, that is, Leave off this wicked course. For the Dispenser hath his name from his Dispensing to the Poor what is theirs; as the goods of the Church are properly. So *S. Basile* <sup>b</sup> stiles the goods and revenue of the Church, ἡ κτήσις τῶν πτωχῶν, and the *Greek* Lawiers call them generally <sup>i</sup> πτωχικά or *provision for the Poor*. And hence is it that diuers Schoolmen to and fro dispute that question, whether the dominion or propriety of the revenue of the Church be in the Clergie; and whether what they giue to the Poor be due *debito Iustitie*, or *debito charitatis*.

I supposed enough had been said in §. 3. to conuince the common error of them, which deriue Feudall Tithes from the Clergie of the time of *Charles Martell*, or affirm any common payment of them then in practice. But it is a hard taske to teach obstinate ignorance. Let that of *Eucherius* his vision be as it will (which yet cannot stand with the time of his death, calculated according to the storie that remains of him; however indeed <sup>k</sup> very ancient Autors help to iustifie it) it still rests certain that the Constitutions of his time, which haue reference to the many sacrileges committed by him and others, vpon Monasteries, Bishopriques, and the rest of the Demesnes of the Clergie, neuer spake word of Tithes. and with that which is there noted in the margin, obserue the seuerall transcripts of that Law of Restitution,

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made

g. Lib. 1. Epist. 269  
& viderib. 415.

h. In Epist. 219.  
edit. super a  
V. Cl. R. Montecassio.

i. Balsamon & Zonaras ad Can. Apost. 59. & vide de hac re Anonymi de recuperat. terra sancta cap. 34. in vol. *Gesta Dei per Francos* dicto.

k. Vide *Adreuald. lib. 1. de Mirac. S. Benedicti* cap. 14. & *Flodard Rhem. hist. lib. 2. cap. 12.* & *Capitular. ecclesiæ Luicæ. 2. Inscript. post Cano. ann. 59. c. 10 p. edit. Gregoriana.*

1 *Constit. Imperial.*  
tom. 1. pag. 15.

m *Annal. Brevium*  
lib. 3. pag. 179. edit.  
Bas. a. d. 1615.  
n *Centur. 8. cap. 7.*  
o 9.  
o *Tom. 3. pag. 117.*

p *Vellus Pauli in*  
*Pecunia & ib.*  
*Scalig.*

q *Godeff. tom. 3.*  
pag. 648.

r *Idem tom. eod.*  
pag. 118.

f *Poste. 59. r. 16.*  
9. 1. edit. Gregor.

e *Vide Godeff.*  
tom. 3. pag. 648.

made in the Synod or Diet at Ratisbon, held vnder Caroloman in DCC. XLII. as it is in <sup>1</sup> *Melchior Goldastus*, in his first Volume he giues it thus, *Decimas, bona Ecclesiastica occupata à prophanis restituiimus.* as indeed both <sup>m</sup> *Auentin* and the <sup>n</sup> *Centuries* haue it also literally before him; both out of corrupted Copies. But afterward the diligent *Goldastus*, finding a better Copie, entirely again publishes the Laws of that Synod neerer the originall; and this one <sup>o</sup> thus: *Fraudatas pecunias Ecclesiarum Ecclesijs restituiimus.* Some other Copies hauing *fundatus.* but none, of any autentic, *Decimas, pecunia* being only their wealth or estate in Lands; as in more ancient time *pecunia* denoted chiefly estate in cattell, and then mony, as now it doth. I know also it had a signification that included offerings <sup>p</sup> of fruits and corn, and so might be drawn to denote Tithes offered, but that signification was of rare vse, and only among the Gentiles. Neither (as I thinke with some confidence) can any man shew me such vse of the word in any Christian Autor of the ancients. And the very decre: of *Thierry King of France*, and that *Charles Martell* the *Maire du Maisin*, of the yeere 1 DCC. XXX. touching the taking from the Clergie their possessions, *ut subueniatur necessitatibus publicis & solatis militum pro Dei Ecclesia, & bono statu Reipub. & vniuersiuiusq; propria pace pugnantium,* as the words of it are, and that of *Caroloman* <sup>r</sup> in DCC. XLIII. speake not a word of Tithes, but only of *terre & Casata* (which were the *Ecclesiastica pecunia*) and the small Rents to be reserued to the Church vpon leases made of them, which is, it seems, vnderstood in the more common giuing of them into Lay hands so much spoken of by *Fleodoard*, that is, Lay men had the benefit of them by hauing Leases of them at small Rents without Fines. Neither is any other thing spoken of in the <sup>f</sup> *Capitularie* exhibited by the Bishops of the Prouinces of *Rhemes* and *Rhosne*, to the Emperor *Lewes* the second. When I see any testimonie neer *Martells* time that so may iustifie the receiud tale of his prophaning of Tithes as I may change my mind. But seeing so much of his sacrileges left in the storie of neer his age, and that not a syllable touching such Tithes we here enquire after, nor any thing els that hath reference to the common payment of them, is found in the Laws made vnder him, I still remain confident in what I haue admonished; and I think so will euery man els that hath an impartiall eie of iudgment. But, for that which I haue here noted touching *Casata*; perhaps *Casata* should rather haue been interpreted a *Mesnage*, or dwelling house. For it appears in that *Capitularie* exhibited to the Emperor *Lewes* and in some other testimonie of that <sup>e</sup> time, that the reseruatiens *ad restaurationem terrarum* (which may be satisfaction giuen by the Lessees of the Clergie, in Rents of land) were *Nonæ & Decima* (where *Decima* haue not to do with payment of Tithes out of meer lay Fees, but only were receiud by reseruatiens) and out of euery *Casata* xij<sup>d</sup>. So it may be that *Casata* is no quantitie of Land there,



as I have coniectured, but a house only. if it be, you see whence I was deceivd. pardon me. perhaps it was an error. I willingly acknowledge so much vpon this Review. I acknowledge it, if that Capitularie of the Bishops and the other testimonie be therein authentique. I somewhat doubt them, because the most known and certain Laws of *Martell's* time speak only of xij<sup>4</sup>. to be refered out of every *Casata*, and the *None* and *Decima* grow not elsewhere into vse till after the beginning of the *French* Empire. and if nothing but *Casata* were spoken of, there were reason enough why they should be taken for Land. But the *None* and *Decima* in those authorities are referd to Land, and the xij<sup>4</sup>. only to *Casata*.

That in the 4. §. of the Tithe of time in Lent out of S. *Gregorie*, is not easily perhaps apprehended by every Reader without a little more explication. The Sundaies as they were exempt out of the number of daies, so were they from the fasting of Lent. thence comes his conceit of the Tithe of Time in XXXVI. daies, which is  $\frac{1}{4}$ . of CCC. LXV. so Fractions be omitted, and to make vp for tie which is express in *Quadragesima*, the known name for Lent; the four daies preceeding *Quadragesima* Sunday, are to be added, this was the intent of that fancie. But how sleight and nothing to the purpose, that obseruation of the Tenth of Time is (howeuer the Canonists, as sworn to their Text, make of it) is easily seen, not only in the absurd libertie of calculation of it, but also by the customs and Laws of both Churches the West and East in their various limits of this time of fasting. Pope *Talescharius*, they \* say, made it VII. Weeks. and other diuerfities hath it had in the Western Church, and the Eastern church exempted y both Saterdaies and Sundaies from fasting through all Lent, except only the Saterday that next preceded Easter Sunday. as also they fasted not on the day of the Annunciation. What regard had they then, think you, to the Tithe of Time?

### Of the VI. Chapter.

THE practice of payment in the third CCCC. yeers, was Parochially obserued in some \* places, but especially by Clergie men, to Clergie men, who (with such as were reputed among them) subiected themselves more to their Canons then the Laitie could be brought to do. But it seems somewhat plain by the many examples of Arbitrary Consecrations to Monasteries and other Churches, related in §. 2. (whereto ioine also the *English* practice in the XI. Chapter, and the \* Charter of *Henrie* the eighth, Duke of *Baviera*, of the Tithes of *Rannelsdosen*, giuen to a Church of S. *Pancrace*) that the payment of them Parochially performed by Lay men, was yet frequently omitted or continued at their own wills. Whence otherwise could the Founders and Benefactors of Monasteries haue made

c 2

Tithes

x *Austasius* in  
vitarum, & vide  
*Baronius* sub ann.  
1348. & *Polydorus*, de  
Inuent. rer. lib. 6.  
cap. 3.  
y *Synodus* in Trull.  
Can. 55. & vide his  
etiam *Constit.* A-  
postolorum de Bas  
lib. 3. Can. 13. 14.  
& 18. & *Consule*  
*Enchiridion* Eccl. Hist.  
lib. 5. cap. 36. &  
*Socratus* Hist. Ec-  
cles. lib. 5. cap. 21.

\* Præter ea quæ  
ad hanc rem §. 1.  
2. & 3. habemus  
Videbis. *Hanc* enim  
in opere Capitulum  
55. ad Laud. Epi-  
scop. cap. 1. & *Ra-  
banus* apud *Con-  
stantinenses* c. 69.  
cap. 7. de iureci-  
rando quod exi-  
gebat nonnun-  
quam ac decimis  
rite solutis.  
a Apud *Auerin*.  
*Annal.* *Baronius*  
lib. 6. pag. 379.  
621. *Bay.* 1615.

Tithes part of their endowments? it was not, in these elder times, so much by giuing them Churches (as the most that speak of this, ignorantly think, telling vs that all Tithes came into Monasteries by appropriating of Parish Churches) as by conueying to them diuers Tithes alone and newly created, and after those gifts, Consecrations, or new creations, no other Tithes were paid vpon any other right, our of that Land which was so charged with them. But most of those Consecrations were at one time or another at length confirmd by Popes and Bishops, and so cleerly after enioyd; which plainly also supposed a former strength in them. For regularly, *Confirmatio ex proprio significatu denotat firmitatem actus confirmati*, as b Panormitan and other Canonists say, and *nihil e iuris noui tribuit, sed tantum vetus confirmat*. But it is plain, that after Parochiall right established, that is since about M. C C. when the Canons grew more powerfull and obedience to them became more readie, such confirmations by Bishops and Popes, and such consecrations, creations, or new grants by Lay men, of Tithes, haue bin taken and declared cleerly void, as you may see in a decree <sup>d</sup> of Pope *Innocent* the III. touching Tithes, so granted by a Knight of *Berry* in *France*, and confirmd by the Archbishop, and <sup>e</sup> in another of his about Tithes so giuen or created to a Church by the King and Queen of *Hungarie*, and after confirmd by a Pope or two. and who can doubt now but that all such grants (in regard of preuention of the Parsons right) be not only void by the practiced Canon Law of this day, but also by the Secular or common Laws of most States (if not of all where Tithes are paid) in Christendom. For admit at this day, that *Titius* grant *Decimas suas* of such an Acre to the Parson, Abbot, or Bishop of such a Church, and this be confirmd by whom you will; The Tithe due from him Parochially is not toucht by it. why? because they are settled *iure communi* (as the Law is practiced) in the Parish Rector. but in those elder times, such an arbitrarie grant vested the Tithe in the Church to which it was giuen, and no other afterward was paid. Why? because then notwithstanding the Canons, no *ius commune*, no Parochiall right of Tithes was settled or admitted in the practice of the Laitie. And for those ancient grants; be nor deceiud by such as tell you they were alwaies of Tithes formerly infeodated from the Church. that hath no ground to iustifie it neither can any man at all proue any common course of such Infeodation of Tithes from the Church into Lay hands, to haue been in any State till the later times of Reformation of Religion in some places, and dissolution of Monasteries. and those two examples which are in Pope *Innocents* decrees are expressly of new creations, at least not of infeodated Tithes, as euery Canonist will acknowledge. But cleerly they both were in themselves according to the many other, but they had not the fortune to be confirmd in such time as the Pope or Clergie vsually gaue way to the former practice of arbitrarie Consecration.

b *Adit. de Dec. c. dudum. non. 11.*  
c *Innocent. ad dist. loc. & tit. de confirm. vi. & in uil. c. cum dilecti 4.*

d *Tit. de his que f. a. pral. sine etc. c. 7. cum Apostolica.*  
e *Tit. de Dec. a. dudum 31.*

cration. And doubtlesse also, after such time as the Clergie saw that the Canons, made for Parochiall right of Tithes, had gotten force, and that the former creations or grants of Tithes by Lay men (which were indeed practiced against many Canons both Papall and Synodall) were, by that name of Lay-mens grants, creations or consecrations, declared vterly void by the Pope and his Canon Law, although confirmed by whomsoever; such of them as had originally no other true titles to Tithes so commonly consecrated by Lay men, subtilly enough in the next four hundred years, left off the pretence of their Lay grantois bountie (especially if the Grantor had been a common person) and betook themselves only to prescription f of XL. years, and to what other times might be allowed to settle a right to them upon a possession of Tithes. and, by what way, retaind safely what otherwise, if they had held themselves to the deeds of their Lay-grantors and to Confirmations, had been in danger enough of being recouered from them by Parish Rectors. So that, when the prescription was good in regard of time and possession; although the originall Title it selfe were naught; yet because any other iust Title might be pretended to ground the prescription on (which also was & not of necessity to be proued in incorporeall things) it was not difficult to haue a fair course to maintain their possessions and right of such consecrated Tithes, as had been posselt so fortie years before they were questioned by Parsons which claimed them *iure communi*. For against them, such a prescription by any other Church, Abbey, or Bishopricque or such like is a good Title. Remember also their erecting of Parochiall Chappells within the larger Territories, out of which they had portions. plainly, the erecting of such Chappells for Parish Churches (the Cure being there serued by some Moake or Vicar, instituted vpon the presentation of them which had the granted portions) made those portions at length also in many places be reputed for Parochiall Tithes, due in regard of those Parochiall Chappells. But what course soeuer they took; it seems certain, that the Titles deriud from Lay consecrations were after this third CCCC. years carefully concealed by the Possessors in such publique records of their reuenues, as were of more common and open vie in their legall proceedings at the Canon Law, howeuer they remaind still in their ancienter and more secret Chartularies. and with vs I haue very rarely, scarce at all, seen an Instrument of them in their Lieger books or otherwise, written in a hand that is later then King *Iohns* time. the most are before him. But I haue seen Catalogues of the time of *Henrie* the third and *Edward* the first, of many large portions of Tithes, that doubtlesse came first from arbitrarie Consecrations, and that through most of the Dioceses of *England*, wherein not the least mention is of any Grantor. only possession is rememberd. and that, by prescription, was to be iustified. Some Titles also I haue seen made to Tithes in Libells of the

f Extr. viz. de praescript. c. 6. & 7.

g Vide Innocent. 4. ad tit. de praescript. c. si diligens & ad tit. de Decimis. c. dictum &c.

time of *Henric* the third, especially in the *Lieger* books of *Reading*, *Osney*, and *Pipewell*. but in none of them euer any deriud from Consecrations. Neither indeed, in that ancientest Formulare of the Canon Law (I mean *Durand*, that liud about C C C. L. yeers since) is any other Libell for Tithes, then such as make the Title Canonically none that touches Lay consecrations; which diuers yeers before his time became as much concealed in legall proceedings of the Canon Law, as they had been in the more ancient times desired and hunted after by such as were enricht by them. This of arbitrarie Consecrations, I presume, is like strange Doctrine to most men. it may well be, for the truth of it, I think, was neuer before so much as pointed at by any that hath writen of any part of our subiect. But I doubt not but euery vnderstanding Reader will think these things here now shortly noted on them to deserue his consideration, which I desire him also to referre to the XI. Chapter. and also let him apply to them the Admonitions toucht presently in Appropriations.

For *Appropriations* which are in the 3. §. they consisted (as you see there & in the XII. Chapter) for the purpose, either in conueying *Parish Churches appropriated with Tithes* settled in them sometimes by a continuance of payment, sometimes by Consecrations, or by both; or of *Churches that were then appropriated when* (according to the vse of the time) *none or few Tithes were paid to them*, yet, afterward in the hands of the Monks or such like, when the Canons for payment of Tithes came into force, got Parochiall payment to be made to them; or thirdly in passing of Tithes formerly created and in *esse*. So that as by *Consecrations*, Tithes newly created, were settled in Monasteries and the like, so, by *Appropriations*, Churches with Tithes in *esse*, or with the pretended right to them, and Tithes alone (but formerly in *esse*) were conueid to them. The whole Appropriation of Tithes with Churches or Churches alone (we shew) in that ancienter time was made by the Patron. The Churches with Tithes (by the name of *Ecclesia cum Decimis*, when Tithes were paid to it) was in point of interest giuen by him. and many more Churches haue been so appropriated, then by the later and more known course. Neither, I think, haue many new Appropriations been since made. not many in regard of the number of the other. But deserues not this then another kind of consideration then is commonly dreamt on, among them which make Tithes due by the Diuine Morall Law to the Euangelicall Priesthood? if they be so; what had the Patron as Patron (were he either Temporall or Spirituall) to do with them in conueying them to Monks, Friars, Nunnes, poor people in Hospitals? none of these, by that name, are of the Priesthood. and that way, they were so equally due to the ministering Priesthood before the Patrons title to the Church, that what euer he could do after he were Patron (although also his act were confirmed by whom you will) could not at all, it seems, touch them, or conuey

uey them from him that should afterward exercise the spirituall function of the Church. Consider Tithes so due; and how could any Monasterie deriue to it selfe any Title to that selfe same Tithe that was so due to the Priesthood? And if it had not the selfe same Tithe, but by prescription or other ciuill Title, hauing the glebe of a Church had also a profit by the name of Tithe as annex to the Church, no otherwise then other Lay endowments (for no man can doubt but that any kind of persons may inioy a profit vnder the name of Tithe or Tenth, as well as a Rent of the Ninth part or of the Eleuenth) who then is it that now detains the Tithe due by the Diuine Morall Law, in cases of Appropriations? doth the Monasterie, or those which haue such appropriated Tithes by conueyance from it? or rather doth not the Parishioner, that is bound to whatsoeuer is by that Law due, although he pay neuer so many other Tenths due only by some ciuill Title? or by that Opinion, is not he that receiues the appropriated Tithe bound to pay a Tenth of it to the Minister, and the Parishioner a Tenth of his Nine parts. I affirm nothing here. it is no place for me to do it. but let these things be first considerable to euery one that talks of Appropriations, and concludes Tithes due *iure diuino morali*. and, for Lay mens right to the appropriated Tithes (that is, such as did either vest in the Monasteries by Appropriations, or at least haue been enioyd by reason of them) let him examine it rather thus: may that which either Grant or Prescription, or other ciuill Title once settled and so euen consecrated to God and holy vses, although abused, be afterward prophaned to Lay hands? But its a grosse error to make it cleer, as many do, that if Tithes be not due to the Priesthood *iure diuino morali*, then Appropriated Tithes may be still possessed with good conscience by Lay men; and that if otherwise, then they may not. For though they be not due so; yet is the consecration of them in the Appropriation, nothing? for if they be not due so, then it will be cleer, I think, to all, that they might passe in the Appropriation, as other things, subiect to the Titles of humane and positiue Law. the many execrations annex to the deeds of conueyance of them, and pould forth against such as should diuert them to prophan vses, should be also thought on, and let them remember also, who saies, that *h* it is a Destruction for a man to deuoure what is consecrated.

To what we haue here of Episcopall right pretended to Tithes especially in *Germanie*, & of Tithes appropriated by Bishops, you may adde the examples of Thietmar Bishop of *Werden* in *Saxonie*, that *i* about M. C. XL. *Contulit Ecclesie sue undecem Decimas, & Contulit fratribus Decimam in Espe*. as also his successor *Herman*, *Contulit Ecclesie sue mediam Decimam de Haselwerder, & integram in Rakestede, & Tunderling*. and *Luder* Bishop there about M. C. C. XXX. *Contulit Ecclesie Decimam in Emelendorp cum aduocacia*, and *ordinauit Scolariibus Decimam in Mendorp*. it seems this their giuing of Tithes to their Church was an assignment

*h* *Prouerb. 30. 35.*

*i* *Kantz Meers-*  
*pol lib 6. cap. 19.*  
*& cap. 19. & lib.*  
*7. cap. 48.*

k. Helmoldus presb.  
hist. Sclauorum  
cap. 91.

assignment of them to the increase of their Prebends, or such like. for it cannot, I think, be understood of Tithes given to the Bishopricque by themselves, who as Bishops possesse or pretended right to Tithes generally in their Diocese. But also, with that noted here touching Gerold Bishop of Oldenbourg (or Lubek) his urging them of the Defects of *Wagria* to pay; obserue the words of his perswasive Letter sent to them to get their Tithes. *Deo, faith he, k gratias ago, quod multarum in vobis parent virtutum insignia, quod videlicet hospitalitati & alijs misericordia operibus propter Deum insituta, quod in verbo Dei promptissimi & in construendis Ecclesijs solliciti assu; in legitimis quoque, vt Deo placitum est, castam ducitis vitam; quæ omnia tamen obseruata nil proderunt, si cetera mandata negligitis, quia sicut scriptum est, qui in uno offendit omnium reus est. Dei enim præceptum est, Decimas ex omnibus dabis mihi, vt bene sit tibi & longo viuas tempore, cui obederunt Patriarcha, Abraham scilicet Isaac & Iacob, & omnes qui secundum fidem facti sunt filij Abraham, per quod laudem etiam & præmia æterna consecuti sunt. Apostoli quoque, & Apostolici viri hoc ipsum ex ore Dei mandauerunt, & sub anathematis vinculo posteris seruandum tradiderunt. Cum ergo Dei omnipotentis proculdubio hoc constet esse præceptum, & sanctorum Patrum sit autoritate firmatum, nobis id incumbit negotij vt quod vestre salutis deest, nostro in vobis opere per Dei gratiam suppleatur. Monemus ergo & obsecramus omnes vos in Domino, vt mihi, cui paternâ in vos cura commissâ est, animo volenti, quasi filij obedientie, acquiescatis, & Decimas prout Deus instituit & Apostolica Bani no firmavit Autoritas, ad ampliandum Dei cultum & ad gerendum pauperum curam Ecclesie detis, ne si Deo quæ ipsi debentur subtraxeritis & substantiam simul & animam in interitum mittatis æternum. Valete.* It seems he was in some confidence, that because he was a Bishop, he might make them belecue any thing of the Patriarchs and the Apostles. and you may see he loued the profit of the Tithes so well, that he would not stand vpon an vn lucky venturing his credit in Diuinitie, or vpon offering a plain falsehood, in writing for them. For though they were due generally as he would haue them, yet how would he haue proued that all the Patriarchs and all that were by faith as the sonnes of *Abraham*, paid them? or that thereby they all had gaind *præmia æterna*? and whence could he haue iustified it, that the Apostles ordaind that they should be paid? it may be therco. he meant the Constitutions of the Apostles, of which enough before. if he did, how could he haue strengthened their autoritie? But they to whom he sent remaind still as farre from obedience as the historicall part of his Letter was from truth. And the truth was, he could by no means get any Tithes of them. But for that (in this §.) of Episcopall right, or the right of the Euangelicall Priesthood, so much pretended against Tithes enioied by Monks, that were indeed Laymen, howeuer reputed as a kind of part of the Clergie; it seems that in those daies the Bishops and Priests often stood so much on it, and so much and so often labourd against

against Consecrated & Appropriated Tithes, possessed by the Monks (for they knew it was to no purpose to vrge the Lay owners, who after they had giuen one Tithe by consecration would giue no more to any of them) that the most common place which in their Synods and Sermons they dealt on, was the right of Tithes, as due to the Priesthood, and in so much also and so vntimely was that common place vsed, that there talking of it was become a Prouerb to denote their frequent going from the matter. as if most vially they fell into that, when they should haue talkt of something else. This is iustified by a passage of the Monk *Simoni* in the life of *Abbo* Abbot of *Floriacum*, where he speaks of a Synod held vnder *Robert* King of *France*, about the year M. (when *Simoni* liud) in the Abbey of *S. Denis*. Very many Bishops, saith he, were present at it, <sup>1</sup> *Qui cum de fidei puritate et de corrigendis tam suis quam subditorum prauis moribus sermocinari debuissent, iuxta vulgare prouerbum, Cunctum suum sermonem ad Decimas verterunt Ecclesiarum, quas Laici ac Deo seruientibus Monachis auferre moliti, resistente eis in hac re hoc V. Dei Cultore Abbate, promissum in se vulgi concitauere manum.* and such danger did the Bishops, in vrging it, draw on themselves, that they were driuen all to dissolue the Synod by running away. you see here *Sermonem ad Decimas vertere*, was as a prouerb to go from the matter. and for those words, *Laici ac Deo seruientibus Monachis*; I think, they are not to be interpreted *Lay men*, and *Monks*, but *Monks that were lay*, and *spent their time in the seruise of God*. For there is no doubt but the Bishops and Priests objected the name of *Laici* to the Monks here; and so was it fit, in the relation, to name them. and it was no wonder that the common people ( whose bountie, in bestowing of Tithes on Monks, should thus haue turned to nothing) so fiercely opposed them. If you vnderstand *Laici* by it selfe here, then it may denote the arbitrarie detaining or disposing of Tithes by meer Lay men, which, I must confesse, *Abbo* and his Monks and all other Monks whatsoever had some reason to withstand. for they gained much by it. But, I doubt, it cannot haue reference to Lay Infeodations. For as yet I could neuer see the least testimonie of an Infeodation of Tithes vntill many yeers after *Abbo's* time. it might perhaps denote them also. but I dare not cleerly affirm or denie here.

The 4. §. is of ancient *Infeodations* of Tithes. What is in old testimonie of them, is there deliuerd. but for time; wee neither fetch them from *Charles Martell*, nor from the holy Warre of between M. XCV. and M. C. as others do. plainly both those Opinions are false. And it is as certain that they are false, as it is difficult to find the true beginning of Infeodations. Neither, I think, did any man euer referre them to *Charles Martell*, before *Martinus Polonus* Archbishop of *Cosenza* and Penitentiarie to the Pope, who wrote about M. CC. LXXX. *Ecclesias* (saith he of him) *spoliat, Decimas militibus conferendo*; and this being through many hands receiud, hath to this houre

1 Vita Abbatis  
Floriac. cap. 9.



abuse many mens credulitie. But thereof, enough already. They are as farre out, that deriue them all from gifts made by *Churches*, or impositions by *Princes*. yet that most common opinion, that they all came first out of *Churches* is elder then the other, and as ancient at least as *Frederique Barbarossa*. For in the controuersie twixt him and Pope *Urban* the third about Inuestitures, *Scimus* (are the <sup>m</sup> words) *Decimas & oblationes à Deo Sacerdotibus & Licitis Primitiis deputatas. sed cum tempore Christianitatis ab Adversariis infestarentur Ecclesie, easdem Decimas Præpotentes & Nobiles Viri ab Ecclesiis in beneficio stabili acceperunt, ut ipsi defensores Ecclesiarum fierent quæ per se obtinere non valerent.* There is no question but this opinion had soon Autors enough among the Clergie. For, the pretence of it was like enough a great perswasion to some Lay men to giue in their infeodated Tithes to the Church, and this the Canonists, for the most part, and generally the Lawiers of most States, take for a cleer truth. which I much wonder at, seeing that while they take it so, yet they interpret that <sup>m</sup> Canon *Prohibemus* (which is the principall prouision against Feudall Tithes, and was made by a Councell, that best knew the practice of the neer former times, against such as were created by Lay men to Lay men) to haue been the stay only of further Infeodations into Lay hands. that is, euery lay Infeodation that hath force they suppose to be of before the time of that Canon. as if the Infeodations from Lay to Lay, there forbidden, were those from which such (for the most part) as continue had their originall. and therein doubtlesse they are right. and the later Canonists that would apply it to all Infeodations then in esse are grossly deceiud, or wittingly strue to deceiue. for in that respect, the Canon is in no State in force. Neither was it anciently so interpreted by the Canonists. but in the other, that is, touching new creations of Feudall Tithes (in preiudice of the Church) by Lay men to Lay men, it hath been euer admitted, and is in practice both in *France* and *Spain*. and what better interpretation of it can be then the continuall practice vpon it since the making of it? and so how can it then be supposed but that Lay men before were chiefly the originall Autors of them? But some <sup>o</sup> Lawiers here to iustifie their receiud opinion, bring this argument. Had they not come from the Church, they say, then had the Tithes themselues, which are now possessed by Lay men through Infeodations, paid Tithes also to the Church by reason of the many Canons made for paiment out of all yeerly increase. But this reason cleerly moues nothing. for the selfe same might haue been objected against the known beginning of Tithes created and consecrated to Monasteries by Lay men. plainly by the Canons, notwithstanding such consecration, the Parochiall right to the Euangelicall Priesthood could not be diminished. and by them also, as well a Tithe out of the Tithe consecrated, as out of the Nine parts of the Parishioner, might, for any, can be proued against it, be demanded by the Parish Rector.

But

m. Apud Melchior.  
Gald. p. Confis.  
Imper. rom. 3.  
pag. 50.

n. Et vide cap. 7.  
§. 3. et seq.

o. B. et seq. d. Ar.  
g. nre in Conf. Brit.  
vic. dei Appropriat.  
et art. 266. pag.  
3110.

But wee see clearly both the originall of those consecrations to haue been from Lay men; and also that no Tithe was or is paid either out of them or out of the rest of the profits of the Nine parts. How then can the other argument touching Infeodations better conclude here? beside it insists vpon Canons. and would conclude practice from Law. which course of prooffe, vsd by most men that write of these things, is grosse and ridiculous. For who euer but indifferently obserues the storie of the elder time together with the Laws, shall soon find that in the Canon Law especially, an argument from *debere fieri* to *factum esse*, is scarce so sound as that so hift at among children, *à posse ad esse*. The truth seemes to be, that both in *Consecrations*, and *Infeodations*, and *Appropriations* of Tithes, there was not any other thing thought on then the name of Tithe, and the right of Tithes nerally due to the Church; as if euery thing being the Tenth, and by that name as it were specified, were presently the Clergies. so that whatsoever was by that name giuen away to meer Lay men or to Monasteries by new creation in either Consecrations or Infeodations, was, it seems, taken alwaies to be the selfe same indiuiduall Tithe which was supposed due to the Clergie. which also doubtlesse was a cause why many Infeodations hauing originall only from Lay men, were falsly supposed to haue first come from the Church. for how easie was it that that which out of its own name only of *Decima* was presently taken as to be due to the Church, should be titled an Ecclesiastique right, and then in the passages of them which would haue had it so, be reckond among such things as the Church had a title to by a former possession? and clearly many of the Laitie also could not but be very inclinable to that opinion. for so long as that held it is likely they resolud they needed not to pay any more to the Church. for when the Church would not keep the feudall Tithes when it had them (they thought it once had them all) they conceiued doubtlesse there was no reason why they should pay it any more or other Tithes. Thus perhaps vpon diuers grounds and causes, both the Laitie and Clergie deceiud themselves in thinking of the originall of these Infeodations. But herein that which we haue toucht before to be considered in Consecrations and Appropriations is also considerable. for what could such Infeodations by Lay men to Laymen, hurt the right of Tithes which was in the Priesthood? especially if due either *iure diuino morali*, or by any positiue Law ancienter then the Infeodation. But we haue not affirmd, that no Infeodations came originally from the Church. Questionlesse some d. d. and beside the examples already noted, you may see that of *Ambrosius P* who *Ecclesie de Hauchis* (in France, about the yeer M. C. X X.) *Decimam laicali usurpatione tenebat*, as *Iuo's* words are, and he gaue the Church to an Abbey of *S. Martins*, and *minutas in presentiarum Monachis d. mittens concessit Decimas, & Decimarum de Culturis Monachorum eis concessit habendam*.

p. *Iuo Epist.* 185.  
editione secunda.  
prius dedit.

q Centur Marti-  
burg. 8. cap. 8.

r 1. Sam. cap. 8.

f Eiusdem gene-  
ris, sub Decimar  
etiam nomine,  
proventus Domi-  
nii solvuntur in  
Gallijs, in Germa-  
nia, alibi, videlicet  
Bertram. d. Argen-  
91; Conf. Brit. art.  
266. pag. 1109. &  
Specul. Saxen. lib. 2.  
art. 38. §. 3. & c.

*dam post sui decessum*, here it seems he had inheritance in the Tithes. For that other coniecture; that they came first from Impositions made by Princes; I doubt it hath no kind of probability. Indeed it appears that anciently in *Turingia*, the people were driven before their Christianity to pay Tithes to the Kings of *Hungarie*, both of their annuall increase, and of their children also; and in the government of the King that was declared by *Samuel*: it is said, *He will take the tenth of your Vineyards and give it to his chiefs Servants, and to his Officers*. But where shall you find the least mention of Infeodations made of such kind of Tenth? or any touch of them in the complaints of the Clergie against Infeodations? and withall, nothing hath beene of lesse practice then giving away in perpetuall right any such reuenuue due to any Crown or State, only by speciall right of Snpreme Maiestie. But admit, these had their originall this way or any other as you will; vnlesse they can be proud to haue been made of the verie selfe same Tithes which is due to the ministring Priesthood (which can neuer been downe; sauing only where the infeodated Tithes was at first receiued and possessed by the Church by force of the Law of Tithing, not by arbitrary Consecration; in which case also it is considerable whether a Lay man could be at all capable of the *fructus* only of them, if due by an immediat expresse Law of God.) I see not how they should more preuent Parochial paiment to the ministring Priest, then the paiment of rents in *Terragies*, or quantities in Corn, vnder the name of tithes to landlords shuld diminish the right of the Spirituall Tithes, which way had either such a fist as was *Pharohs*, or the Tenth spoken of by *Samuel*, to be taken by the King, touched the Tithes due by a superior or former Law, to the Leuitical Priesthood? both might wel haue stood together. Might not so, nay, should not so Tithes remain paialle first the possessors of the nine parts to the Euangelical Priesthood, notwithstanding infeodations or any reseruations whatsoever, if they bee due by a superior or former Laws, especially if due by the Morall Law? and that Law should bee vrged rather against the Tenants of the Land then against the Pernors of the feudall Tithes. And that common distinction of the Canonists, of *ius percipiendi*, & *fructus Decimarum* here, is a mere shift, and nothing satisfies, vnlesse they could also teach vs how the *fructus* were the verie selfe same alwaies in Infeodations, and that they were deriued from a *ius percipiendi* in some Clergie man. Perhaps too much of these things; which are little or nothing applicable to *England*, where we haue scarce any example of a Tithes, that was in its nature feodall, other then in such as were taken from Monasteries by the Statuts of Dissolution, and may still be calld, as originally, by the name of Consecrated or Appropriated Tithes, although now Infeodated. But thereof see the XIII. Chapter.

To the 5. §. that speaks of Exemptions; for matter of story may be added

added that of the *Hospitalars*. After their Exemptions given them with the two other Orders; about the year M.C.L.X. in the Eastern parts they *tam Domino Patriarche quam ceteris Ecclesiarum Prelatis multas tam super Parochiali iure quam super iure Decimationum caperunt in ferre molestias, &c.* and receivd such as were excommunicat for non-payment of them. *De prædys autem suis & uniuersis redditibus quocunque iure ad eos deuolutis omnino Decimas negabant.* Where by the way note that in this Eastern Church (which, after *Hierusalem* was recovered and made a Kingdome subiect to Western Princes, should haue been fashiond according to the Canons of the Western Church) Tithes were now appointed payable, although no authentike Law of that old Eastern Church, once mentions them. But both in this and other things, the people of that Church were stil (notwithstanding the new Kingdome of *Hierusalem* possessed by Europeans, and the Popes authority extended to them) most obstinate & refractarie against the policie and Institutions offerd them either in command or example from the Western.

After the *Opinions* of the Age in the 6. §. the Laws both *Imperiall*, *Provinciall*, and *Pontificiall* follow in the 7. vpon which let it bee considerd, whether a consecration of Tithes were so made by the power and law of the Church or Common-wealth or both (in seuerall Territories, according as the Laws extended) that no profanation or detaining them or any part of them, might afterwards be lawfull, and the like should be carefully thought on in the 1. §. of the VII. Chapter, and in the VIII. Chapter which hath the Laws of *England*, for the same purpose. The *force of the words* of all those Laws; the *Autoritie* that made them; and the *Territories to which they were extended*, are especially to be obserud by euerie one that here looks after humane positive Law; For manie talke and write of that, and tell vs here of *ius Ecclesiasticum* (or least if they faile in their Arguments from *Ius diuinum*) but whenc that *Ius Ecclesiasticum* is, and where or when made, they little enough know. For what hath a *Provinciall Councell* of one Nation to doe with another? What hath the *Imperialls* of the old *French Empire* to doe with *England*? Nay, what hath the *Popes* Decrees to do here? But because there was a time when their authority was more largely acknowledged; their Decrees, that bred much of what now iustly continues in some States (which also iustly now denie their autoritie) remaine most obseruable. and wee haue giuen them in their places.

### Of the VII. Chapter.

**I**N the last CCCC. years, beside the establishment of *Parochiall* right in Tithes, and the various *Opinions* touching the *immediat Law* whereby they are due; the *Practice* of most Christian Nations, as it might be had out of their Laws and Lawiers, is faithfully related.

2. W. Tyrus de bello sacro lib. 18, cap. 3.

u Quod constat ex Marini Sacrosi Torfelli Secret. Fidei lib. 3. pars. 3. & epist. 8. & 1. novum de recuperat. Terræ Sanctæ cap. 18.

x Ordonances de  
France litz.  
tom. 2. de Mines &  
Minieres,

And to what is there brought, adde that of the Law of France, wherby the right of the Tithe of all Mines is claimed by x the King, as a *droit de Souverainete*, according as it is declared by two Edicts published of Charles the IX. and verified also by the Parliament of Paris, according also, the old Imperiall Law was. But through all here, you may see that the *Customes Statutes and Common Laws*, especially of France, *Italie and Spaine*, and of most other, if not all States, permit not, so fauourably for the Clergie, an exaction of them, or suite to be so generally brought for them, as the Laws of *England* did before the Statutes of Dissolution of Monasteries, and still do, if you exempt these cases which are founded only vpon those Statutes. What Statute or practice is in this Kingdome, that equals, the *Carolines of Spaine*, or the *Philippine of France*, which are generall Laws for Customes (*quatenus Customes*) *de non Decimando*? And whereas *England* vntill the Dissolution, had scarce a continuing *Infeodation* into lay hands (of which see the XIII. Chapter) nor could a lay man by the common Law before the Dissolution, make any title to Tithes as to lay inheritances; in other Nations Tithes infeodated haue been from aboute D. almost D.C. yeers frequent in vse, and still continue legally in lay hands, and are subiect wholly to *Secular Iurisdiction*, as also other Tithes paid to the Church are, whersoever any such suite is commenced for them in their *Spirituall Courts*, as stand not with their libertie challenged from their *Secular or Common Laws*. For euerie Christian State hath its owne *Common Laws*, as this Kingdome hath. And the *Canon Law* euerie where, in such things as are not merely spiritual, is alwaies gouerned and limited (as with vs) by those *Common Laws*. For by that name are they to be calld as they are distinguisht from the *Canon Law*, which hath properly Persons and Things sacred only and spiritual for its obiect in practice, as the *Canon Laws* deale with Things and Persons, as they haue reference to a *Common*, not *Sacred*, vse or societie established in a Common wealth. Who knows any thing in Holy Writ knowes the vse of the word *Common* to be so distinguisht from *Sacred*. Indeed it hath other notions there also, and it is otherwise vnderstood in *ius commune*, frequently among Canonicists and Ciuilians. But these nothing at all hurt the conuenience of this denomination. For by them, *Ius commune* is vscd as it is opposd to *Municipale* or *Consuetudinarium*. But here, and in the nomination of the English Laws, as it is distinguisht from *Sacred* or *Spiritual*, and so in this sense the allowance of Customes, and Parliamentarie Statutes (as they ought) fall vnder the name of *Common Law* with vs. Here I doubt not but it will be an obuious obiection, that I should rather call the supreme and gouerning Law of euerie other Christian State (sauing *England and Ireland*) the *Ciuill Law*; that is the old *Roman Imperiall Law of Iustinian*. For such a raising, but most grosse Ignorance,

is euery where almost to be met withall in England, that you shal haue it affirmed for cleer that all other States are governd only by the Ciuill Law. Indeed, if they which say so, vnderstood Ciuill for that which is the *Ius Ciuile* of euery singular State, it were but the same to talk of Ciuill and Common Law. For the Common Law of England also is the *Ius Ciuile Anglorum*. But it is euen with one mouth pretended vssually, that the Bodie of the *Imperialls*, read and profest in the Vniuersities, is the Ciuill Law, that gouernes (as they say) all other States. But this, how-soeuer receiued through lazie Ignorance, is so farre from Truth, that indeed no Nation in the world is gouerned by them. For wheresoeuer they are supposed to gouerne (let the brieft clearing of so common an error, get pardon for the digression) it must be taken, that they either gouerne by their *owne* *originall* *authoritie*, as they are *Imperialls*, or from their *being* *receiued* *for* *Laws* *into* *other* *States*, which are not in that first way subiect to them. According to that first way; only the *Empire*, and perhaps a good part of *Italie*, should be ruled by them. But it is plaine, that for the most part, the disposition of Inheritances, punishing of Crimes, course of Proceedings, Dowers, Testaments, and such other, which are of greatest moment vnder the Legall rule, are euen in those States, where, by reason of their first Institution, they retain a kind of *authoritie*, ordered by most various Customes and new Statutes of seuerall Prouinces and Cities, so differing from those old *Imperialls*, that the whole face and course of them is exceedingly changed in practice. This is plaine to euery one, that obserues but the diuers Customes and Ordinances of the States subiect to the *Empire*; the *Ius Camerale* collected by *Petrus Denaissius*; the *Nemesis Karulina*, as it is set forth by *Georgius Romus*; and the many published Decisions or Reports both of the *Imperiall Chamber*, and the *Rota's* of *Rome*, *Naples*, *Piemont*, *Mantua*, *Genoa*, *Bologna*, and other parts of the Territorie of *Italie*. You shall find those Decisions, in matters of greatest moment, most commonly grounded on Customarie Law, or later Constitutions. So, that to affirme, that in these places the old *Imperiall*, or that Ciuill Law (as they call it) gouernes, is as if (for example) an equall ignorance should tell vs, that *Spain* were gouerned only by *Alfonso's Partidas*, and *Scotland* only by *Malcolms* Laws or the *Quoniam Attachbamenta*; or that in the time of the old Emperors the *Roman* State had been alwayes gouerned only by the *XII. Tables*, or that *England* were legally ruled only by the *Grand Charter*, or by the two volumes of old Statutes. Like acceffion and alteration as any of these haue had, is found in the *Empire* and in *Italie*, where the *Imperialls* haue, through the power of the Emperors and 7 Popes, any now continuing *authoritie*. Now, for other Christian States, which acknowledge no superior, nor any subiection to the *Empire* (except *Portugall*, where the *Roman Ciuill Law* is authorized, by an 2 Ordinance of State, in cases

y Vilefis *diff.* 10.  
c. 12. & 13. &  
exp. de noui operi  
instititione. c. 1.  
z Vilefis *Supra*  
de legibus lib. 3.  
ca. 8. § 3.

which

which are not literally comprehended in the Customes or Constitutions of the Kingdome) as *France, Spaine, Scotland, Denmarke, Poland, the Citie of Venice*, and what also in *Germanie* hath made it selfe free from the Empire; what colour is there, that the Imperiall Ciuill Law should gouerne in them. Indeed in all of them, I thinke, the reason of it brought into method, is vsed and applied commonly to argument, when any of their Customes or Statutes (which are especially in *France and Spaine* very voluminous) come in question, because the Practicers studied it in the Vniuersities, and had thence their Degrees giuen them; which yet they had not, till about some CCCC. yeeres since, neither before about that time was a Doctor or Professor of them known on this side the *Alpes*. But as it is Law, it neither binds nor rules with them, no more then the old stories of *Herodotus, Thucydides, Diodore, Polybius, Iosephus, Liniæ, Tacitus*, and the like, or *Cicero* and *Demosthenes*, or *Plato's Lawes*, and other of that kind; which are equally sometimes vsed for reason or example, specially by the Practicers of *France*. And so the old Imperiall Ciuill Law valet pro ratione (as *Bertrand d'Argentre*, President of the Parliament of *Rennes* \* *sayes*) non pro inducto iure; & pro ratione only quantum Reges, Dynastæ, & Respublica intra potestatis suæ fines valere patiuntur. And in *France and Spaine*, Laws <sup>b</sup> were some CCC. yeeres since expressly made, that the Imperials should haue no force in them. And in *Scotland* it is ordaind, that no Laws haue force there, but the Kings Laws <sup>c</sup> and Statutes of the Realme, and that it should be gouerned by the common <sup>d</sup> Lawes of the Realme, and by none other Lawes. Doubtlesse, Custome hath made some parts of the Imperials to be receiued for Law in all places where they haue been studied; as euen in *England* also, in Marine causes, and matter of personall Legacies. But is *England* therefore gouerned by them? It were as good a consequent to conclude so, as to affirme, that any of the other States were, because some petie things are ordered according to some Imperiall Text receiued and establishd by Custome. But this may seeme no fit place to speak more (perhaps not so much) to cleere this grosse error of such as yet pretend to know more then vulgarly, but can make no difference twixt the vse of Laws in studie or argument (which might equally happen to the Laws of *Utopia*) and the gouerning autoritie of them. If any desire to search further here, beside the Autorities cited in the \* Margine, let him especially see *I. Baptista à Villalobos* his *Antinomia Iuris regni Hispaniarum ac Ciuilis*, & note especially la Conference du droit François avec le droit Romaine, composed by *Bernard Autoume*, and obserue both the Volumes of Statutes and Ordinances of *Spaine, France, Scotland, Poland*, and of other Countries, together with the various Prouinciall Customes, especially in *France*, with the Arrests, Decisions and Playdoies of that Kingdome, and he shall soon be confirmed in that which a great Scitilian of *Italie* is ingenuous enough to tell vs; *Hispania, Anglia, Scitia,*

a. Ad Consuet.  
Brit. tit. 22, de  
Successionibus, ad  
rubricam.  
b. Vide Choppin.  
du Domaine &c.  
lin. 2. tit. 15. § 5.  
Bodin de Repub.  
lib. 1. cap. 8. Suarez  
vbi supra &c.  
Philip. 3. in prag-  
matica ante collect.  
Legum Regni.  
c. Parl. 3. Jacobi 1.  
cap. 48.  
d. Parl. 6. Jacobi 4.  
cap. 79.

e. Vide extr. tit.  
de Privileg. c. 28.  
super specula, &  
ibid. Hostiens. l.  
Andr. Anton.  
de Butrio. item  
Choppin. du Do-  
maine, lin. 2. tit.  
15. § 5. Bodin de  
Repub. lib. 1. cap. 8.  
& ante alios Suar-  
ez de Legibus,  
lib. 3. cap. 8. vide  
etiam prefat. ad  
Statut. Polonus,  
Prilufij.



ria, Balia, Hibernia, Alemania, Dacia, Suetia, Vngaria, Boemia, Polonia, Bulgaria, & non videntur legibus seu iure civili, sed specialibus consuetudinibus & statutis, that is, they are all governed by their owne common Law. And that most learned Frier Bacon, of his time; *Omne regnum habet sua iura quibus laici reguntur ut iura Anglia & Francia, & ita fit Iustitia in alijs regnis per Constitutiones quas habent sicut in Italia per suas.* This was then, and is now true. And the Interpretation of those common Laws in most places, saue England and Ireland, hath of late time been much directed by the reason of the Imperiall, and only by the reason of them (not by their autoritie) and that also in case when they are not opposite at all to the common Law, but seeme to agree with the Law of Nations or common reason. And this vse of them, at the furthest, began in its yongest infancie, not C. D. LX. yeeres since. For before that, euen from Iustinians time, they lay wholly out of vse: sauing only, that some pieces of them, with the Interpolations of Alaricus and his Chancellor Anian, together with Lombardine Additions and Interpretations, had their power in some parts of Italie and the Empire. But for about D. C. yeeres together, that is, from Iustinian till Frederique Barbarossa, no Profession was of them in any Vniuersitie, no Doctorship, no other Degree taken in them. But after that time, they grew into a common Profession in this Western world (although by their own autoritie they are confined to Rome, Constantinople, and Berytus) and euen here in England were, about Henry the thirds time, often applied to the common Law in discourse and argument, as you may see in Bracton his frequent quotations of them. And heretofore some texts of them haue been in our Courts cited; not only as at this day sometimes is done (when the words only of some of the *regule iuri* is brought into an argument) but the Title and Law, after the Ciuilians fashion, hath been rememberd at the Barre, and so afterward exprest in the Report, as I haue seen in an example or two in the Mss. yeers of Edward the <sup>h</sup> second. Yet, notwithstanding that, it is cleere, that England was neuer governed by the Ciuill (or Imperiall) Law, as it was also affirmed by the vpper House of Parliament in 11. Rich. 2. where the King and Lords protested also, that their meaning was, it neuer should be governed by it.

f Hieronym. Giga  
tract. de Crim. laici  
Maitst. lib. 3. quest.  
23. §. 18. & 19.  
g In Compend.  
Theolog. citatur in  
Notu, ad Fontes  
pag. 43.

h In Biblioth. Lat.  
Templ.

### Of the VIII. Chapter.

Of this fullnesse of Laws that were made for Tithes in England let it be considered (by such as enquire here *de iure*) what interest was of right settled in the Clergie by them (howsoever they were little obeyed.) And by what Autoritie made (we haue carefully added still what might help to a iudgement in that also) and how extensue, in regard of Persons and Territorie, they were, and some such other; and how farre the Tithes might be, after such Laws, detained or

made subiect to Customes, or possessed as things of common use. The Laws of before, as well as of after the Norman Conquest (as it is vulgarly called) are here gathered, and are perhaps equally observable, as the rest, in the consequent of a generall consecration of Liberties to the Church in England. For neither were the Laws formerly made, abolished by that Conquest, although, by Law of <sup>i</sup> Waite, regularly all Rights and Laws of the place conquered, be wholly subiect to the Conquerors will. For in this of the Norman, not only the Conquerors will was not declared, that the former Laws should be abrogated (and untill such declaration, Laws remaine in force, by the opinion of <sup>k</sup> some, in all Conquests of Christians against Christians) but also the ancient and former Laws of the Kingdome were confirmed by him. For in his fourth yeere, by the aduise of his Baronage, he summoned to London, *Omnes Nobiles sapientes & lege sua eruditos, ut eorum leges & consuetudines audiret*, as the words are of the Book of Lichfield, and afterward confirmed them, as is further also related in <sup>l</sup> Roger of Houeden. Those *Leges sua eruditi* were common Lawiers of that time, as Godric and Alfrin were then also, who are spoken of in the Book of <sup>m</sup> Abingdon, to be *Legibus patrie optimè instituti, quibus tanta secularium sacundia & prateritorum memoria euentorum inerat, ut ceteri circumquaq; facile eorum sententiam, ratam fuisse, quam edicerent, approbarent*. And these two, and diuers other Common Lawiers then liued in the Abbey of Abingdon, *Quorum collationi nemo sapiens* (sayes the Autor) *refragabatur, quibus rem Ecclesie publicam tuentibus eius oblocutores elingues fiebant*. You must know, that in those daies, euery Monk here in England, that would, might remaine so secular, that he might get money for himselfe, purchase, or receiue by discent to his owne vse. And therefore it was fit enough for practicing Lawiers to liue in Monasteries. But what had those *prateritorum memoria euentorum* (that is, Reports and adiajded Cases of the Saxon times) auailed in their skill, if the former Laws had not continued? More obuious Testimonies to this purpose are had out of <sup>n</sup> Gernase of Tilburie, *Ingulphus*, and others, and we here omit them. But also, indeed, it was not to be reputed a Conquest, or an Acquisition by right of Warre (which might haue destroyed the former Laws) so much as a violent recouering of the Kingdome out of the hands of Rebels, which withstood the Dukes pretence of a lawfull Title, claimed by the Confessors adoption, or designation of him for his Successor; his neereneffe of blood on the mothers side not a litle also aiding such a pretence to a Crowne. For the Confessors mother *Emme*, was sister to Richard the second, Duke of Normandie, to whom, William was Grand-child and Heire. But these were only specious Titles, and perhaps examined curiously, neither of them were at that time enough. And howsoeuer his conscience so moued him at his death, that he profess he had got <sup>\*</sup> England only by Blood and the Sword, yet also

i Vide *Quinrili*  
an lib. 5. *Instituti-*  
on. cap. 10. *Atheric*.  
Gentil. de iure belli  
lib. 3. cap. 5. & *Fla-*  
*roman*. *Ilust. quæst.*  
5.  
k *Caluins case*,  
fol. 17. b.

l In Hen. 2. pag.  
347.

m *Mu. lib. 3. pag.*  
33. & 36. in *Bibl.*  
*Cotton*.

n Vide *Isis Coke*  
*Præfat. ad Relat.*  
3. & 8. & si placeat  
*Not. ad Fortesc.*  
pag. 7. & 8.

<sup>\*</sup> *Hist. via Carlo-*  
*magni*.

also by expresse declaration in some of his Patents, he before pretended his right from the Confessors gift. *P In ore gladij, saith he, Regnum adeptus sum Anglorum, deuictio Haroldo Rege, cum suis complicitibus, qui mihi regnum cum prouidentia Dei deuictum & beneficio concessionis Domini & cognati mei gloriosi Regis Edwardi concessum conati sunt auferre &c.* And the stories commonly tellvs that the Confessor *successione Anglie ei dedit.* And although Harold also pretended a Deuise of the Kingdom to himselfe made by the Confessor in extremis, and vtged also that the custom of England had been from the time of *Augustines* coming hether, *q Donationem quam in ultimo sine quis fecerit, eam ratam haberi;* and that the former gift to the Norman and his own Oth for establishment of it were not of force, because they were made *absq; generati Senatus & Populi conuentu & edicto;* yet for his own part he was driuen to put all vpon the fortune of the field, and so lost it. and the Norman with his sword & pretence of the sufficiencie & precedence of the gift made to himself, got the Crown as if he had bin a lawfull Successor to the Confessor, and not a vniuersall Conqueror. All this is plain out of the stories, and iustified infallibly by that of the Titles of many comon persons made to their possessions in England after his Kingdom seised, vpon the possession of themselues or their Ancestors in time of the Saxon Kings, especially of the Confessor. but this was alwaies in case where they by whose possession the title was made, had not incurred forfeiture by Rebellion. many such Titles are cleerly allowd in the book of *Domesday*, written in the Conquerors time. one specially is noted by the most learned Camden in his *Norfolk*. that, as I remember, is told in *Domesday* also, but enough others are dispersed there which agree with it. How could such Titles haue held if he had made an absolute conquest of England, wherein a vniuersall acquisition of all had been to the Conqueror, and no title could haue been deriud but only from or vnder him? More might be brought to cleer this; but we adde here only the iudicious assertion of a great Lawier of Edward the thirds time. *Le Conquerour (saith he) ne vient pas par ouster eux que auoient droiturell possession mes de ouster eux que de leur tort auoient occupie a leur terre en desheritance del Roy & son Corone.* It was spoken vpon an Obiection made in a *Quo warranto*, against the Abbot of *Peeterborough*, touching a Charter of King *Edgar*, which the Kings Counsell would haue had void, because, by the Cōquest, all Frāchises, they said, were deuolud to the Crown. But, by the way, for that of his newnesse of blood, which could not but aide his other pretended Title; let it not seem merely vain, in regard of his being a Bastard. There was good pretence for the helpe of that Defect also. For, although the Laws of this Kingdom, and, I think, of all other ciuill States at this day, exclude Bastards (without a subsequent legitimation) from enheritance; yet by the old Laws vsd by his Ancestors and Countre men, that is, by those of *Norway*, a Princes sonne gotten *et* on a Concubine

*p Chart. Eccles. Westm. in Inspect. part. 7. 1 Ed 4. membr. 26. & vide Camden. pag. 104.*

*q M. siue Autor Guil. Poitau. siue quis alius sit, in Eadl. Custom, 1. Malmesb. lib. 3. de gest. Regum. pag. 56. a. alio in Writ. 1 & videfis Matth. Paris in Hen. 3. pag. 1237. edit. London.*

*f Sharde in Cass. in Trin. Temp. Ed. 3. fol. 143. b.*

*g Ville Rogers, de Henric. in Richard. 1. p. 425. & 347.*

bond or free, was equally inheritable as any other born in wedlock; which was, I beleue, no small reason why he stood at first so much for the Laws of Norway to haue been generally receiued in this Kingdom, and some Stories also which make mention of Duke Robert his getting William on that Arlet or Arlec (as thce is sometimes witen) say that thce was to him a good while *vice uxoris*. So Henrie of <sup>u</sup> Knighthston Abbot of Leicester: *Transiens*, saith he, *Robertus aliquando per Phaleriam urbem Normannie vidit puellam Arlec nomine Pelliparij filiam inter ceteras in chorea tripudiantem. nocte sequente illam sibi coniunxit, quam vice uxoris aliquandū tenens Willielmum ex ea genuerunt.* And he tells vs also the common tale of tearing her smock. If thce were so his Concubine or *Viceconiux* (between whom and a wife euen the old <sup>x</sup> Imperials make no other difference but honor and dignitie; and by them also some kind of inheritance is allowd to <sup>y</sup> such Bastards as are *Naturales liberi*, that is gotten on Concubines;) it was much more reasonable that her sonne should be reputed as legitimate, then that the sonne of euery single woman bond or free, whether Concubine or no, should be so, as those Laws of Norway allow. and when he had inherited his Dukedome, he made, doubtlesse, no question but that his blood was as good in regard of all other inheritances that might by any colour be deriud through it. and therefore William of Malmesburie well stiles him *proximè consanguineus* also to the Confessor, as he was indeed on the Mothers side. and those <sup>z</sup> of the posteritie of Edward sonne to Ironside, were then so excluded or neglected that their neernesse on the Fathers side could not preuent him. you may see the common stories of them. But whereas that excellent <sup>a</sup> Lawier Littleton saies, that William the Conqueror was called a Bastard because he was born before marriage had between his Father and Mother, and that after he was born they were married (which indeed by the <sup>b</sup> Imperials and by the generall Law of <sup>c</sup> France would haue made him wholly legitimat) I doubt he had but litle or no ground to iustifie it. Had he been so legitimat, it is not likely he should haue been stiled so commonly and anciently *Bastardus*, which name euen in his <sup>d</sup> own Charters he sometimes vsed with *cognomento*, as also the Bastards of the old Philip Duke of Burgundie were wont to do; although of later time it bee reputed as a name of dishonor; and the *actio iniuriarum*, or an action vpon the case lies where euer it be falsly objected, as some will <sup>e</sup> haue it. But these things proue enough that this William seised the Crown of England, not as conquer, but by pretence of gift or adoption, aided and confirmd by neernesse of blood; and so the Saxon Laws formerly in force could not but continue. and such of them as are now abrogated, were not at all abrogated by his Conquest but either by the Parlements or Ordinances of his time and of his Successors, or else by non-vfage or contrarie custum.

The Lawe that are here gatherd are for the most part Latin, Saxon,

<sup>u</sup> In Bibl. Cotton.

<sup>x</sup> ff. de Legat. 3.

<sup>L</sup>. Item Legato 49.

<sup>S</sup>. 4.

<sup>y</sup> Authent. 89. c.

<sup>z</sup>. de heret. iur.

<sup>c</sup>. c.

<sup>z</sup> Videffs Mal

meik de g. b. Reg.

lib. 2. fol. 52.

<sup>a</sup> 18. Ed. 4. fol. 30. a

<sup>b</sup> C. de Nat. lib.

c. cum quis 10. &c.

<sup>c</sup> Videffs Basquet

de Domasne du

Fr. traict du Ba-

gardist chap. 9. &c.

<sup>d</sup> Apud Camden

in Richemonda.

<sup>e</sup> Videffs Pont.

Mentem de libe-

ris Natural. cap. 13

or *French*. The *Saxon* is interpreted by the old *Latin*. But the *Latin* and *French* are left only in their own words. I presume, scarce any man that with the least care studies the subject, will confesse he vnderstands not the context of such *Latin*. And the *French* I translated not, specially because it is but the same which is in our old yeer Books and Statutes, and may indeed euen as soon be vnderstood by any fit Reader of the rest, as I could haue translated it. and I think the iudicious Searcher desires rather the originall tongue whateuer it be, then a translation. therefore I suppose (if he haue not studied the Laws, or otherwise know it) he will rather take some minuts pains then blame me for not turning it and howsoever to diuers peeuish Ignorants, out of their daintie stomachs, and a pretence of nothing but the more polished literature, it may here seem barbarous and distastfull; the truth is, it was the plain and genuine *French* of elder time spoken in the *Engl<sup>ish</sup>* Court, and now lothed only by such as know not at all how to iudge of it, nor vnderstand the originall whence it came to be and remain so with vs. I remember that old <sup>f</sup> Father Gregorie of Neocæsarea (whom they call *Tbaumaturgus*) speaking of the old Imperialls of Rome, as they were in their *Latin* (which both then was, and now is a most accurat and polite phrase) commends them for that they were indeed in an admirable and stately language, and in such a one as fitted an Imperiall greatnesse, *πολύμηλον καὶ βασιλικόν*, saith hee, Yet to me it is crabbed and troublesome. and so he saies he was euer driuen to think of it. yet in his youth he was put to studie them at *Berytus*, and was taught *Latin* to that purpose. If to so great a man that curious language could seem no pleasanter, when he studied it, it is the lesse wonder that the Law *French* (which doth as truly and fully deliuer the matter in our Laws, as the *Latin* in the Imperialls; though indeed farre from polite expression) should bee so contemptible among the many petie Ignorants which vsually despise what euer their lazie course of studies hath not furnished them withall, and most indiscreetly censure things only as they see them present, without regard to the cause or originall of them, which made them that they were first ineuitable and afterward remaind, not without exceeding difficultie (if at all) alterable. But this by the way.

f In Panegyric,  
ad Originem.

Of the IX. X. XI. XII. XIII. and  
XIV. Chapters.

Vpon the discouerie of the Originall of our Parishes, of the ancient and late Practice of Tithing here, of Arbitrarie Consecrations of Tithes made by the Laitie, of the first setting of Parochiall right to Tithes in England, of Appropriations, of Exemptions, of Infradations, and the ancient Iurisdiction of Tithes (all which take vp these VI. Chapters) no fit Reader can be so blind as not to see necessarie

and new assertions and consequents to be made out of them in every inquirie that tends to a full knowledge of the true and originall nature of Tithes, as they are posselt or detain'd by either Lay or Clergie man, in respect only of any humane positive Law or civill Title. But we should here briefly admonish somewhat of our *appropriated or consecrated Tithes*, and conclude all with a touch of the *Canon Laws ancient autoritie*, which in practice made such alteration in *England*, as is shewd, about the yeer M. C. C.

To the matter of *Consecrations* and *Appropriations* here, apply what is admonish't touching them in the *Review* of the VI. Chapter. and let every man first carefully look that he know the course of old *Appropriations*, and the way how the *Monasteries* and *Colleges* came by them, before hee conclude rashly of the Tithes that are posselt through them. *Tithes consecrated and appropriated* were purposely dedicate to the Almighty and his Service, although not without mixture of superstition. that we are sure of. But although a Tithe generally were due to the Evangelicall Priest *iure divino* (without any civill Title) yet we are nothing sure that all or the most *appropriated or consecrated* Tithes are the selfesame Tithes so due. which yet is supposed as cleer, and never further thought on by such as have troubled themselves and their Readers with arguments for the Church, in the point of Appropriations. Let him that shall now write of them, see here the way how to consider them. and let him that detains them (and belees them not due *iure divino*) think of the ancient *Dedications* of them made to holy uses. and however they were abus'd to superstition, as the other large Indowments of the Church, before the Reformation; yet follows it not, without further consideration, that therefore, although so dedicated, they might be prophand to common uses and Lay hands. Consult herein with Divines. But I doubt not but that every good man wishes that at our dissolution of Monasteries both the Lands and Improprated Tithes and Churches posselt by them (that is, things sacred to the service of God, although abus'd by such as had them) had been bestow'd rather for the advancement of the Church to a better maintenance of the labouring and deferving Ministerie, to the fostering of good Arts, relief of the Poor, and other such good uses as might retain in them, for the benefit of the Church or common-wealth, a Character of the wishes of those who first with devotion dedicared them (as in some other Countries & ypon the Reformation was religiously done) then conferr'd with such a prodigall dispensation, as it happend, on those who stood readie to *devowre what was sanctified*, and have (in no small number) since found such enheritances thence deriued to them, but as *Seius* his horse or the gold of *Tboloufe*. But I abstain from censure, and adde here by the way, a complaint made to the Parliament not long after the Dissolution, touching the abuse that follow'd in the Church through Lay

mens

mens possessing of Appropriated Churches and Tithes. It deserves to be seriously thought on by euery Lay man that now enioy any of them, especially where Diuine seruice is not carefully provided for. Ye that be Lords and Burgeses of Parlament boule (so are the words of it) I require of you in the Name of all my poor Brethren (that are English men and members of Christs bodie, that yee consider well (as yee will answer before the face of Almighty God in the day of iudgment) this abuse and see it amended. Whereas Antichrist of Rome durst openly without any visermelle up and down thorow out England, he had so great fauor ther, and his children had such craftie wits (for the children of this worlde are wiser in their generation than the children of light) that they had not only almost gotten all the best lands of England into their hands, but also the moost part of all the best Benefices both of Parsonages and Vicarages, which were for the most part all impropred to them (the Improprations held by them were much more then one third of all the Parish Churches in England deuided into three parts) And when they had the gifts of any not impropred, they gaue them vnto their friends, of the which alwaies some were learned. For the Monks found of their freinds children at scole. And though they were not learned, yet they kept hospitalitie, and helped their poor freinds. And if the Parsonage were impropred the Monks were bound to deale Almesse to the pore, and to keepe hospitalitie, as the writings of the gifts of such Parsonages and Lands do plainly declare in these words, in puram cleemosynam. And as touching the Almesse that they delt, and the Hospitalitie that they kept, euery man knoweth that many thousands were well recciued of them, and might haue been better, if they had not had so many reue mens Horse to fede, and had not bene ouercharged with such idle Gentlemen, as were neuer out of the Abbaies. And if they had any Vicarage in their hands, they set in sometime some sufficient Vicar (though it were but seldome) to Preach and to Teach. But now that all the Abbaies with their lands, goods, and impropred Parsonages, be in Temporal mens hands; I do not here tell that one halpenie worth of Almes or any other profit cometh vnto the people of those Parishes. Your pretence of putting down Abbeyes, was to amend that was amisse in them. It was farre amisse, that a great part of the lands of the Abbeyes (which were giuen to bring vp leauened men that might be Preachers, to keepe Hospitalitie, and to giue Almesse to the poore) should be spent vpon a few superstitious Monks, which gaue not X L. pound in Almesse, when they should haue giuen C C. It was amisse, that the Monks should haue Parsonages in their hands, and deale but the X X. part thereof to the Poore, and preached but ones in a yeer to them that paid the Tithes of the Parsonages. It was amisse, that they scarcely among X X. set not one sufficient Vicar to preach, for the Tithes that they recciued. But se now how it that was amisse is amended, for all the godly pretence. It is amended euen as the Deuill amended his Dames legge (as it is in the Prouerb) when he should haue set it right, he bracke it quite in pieces. The Monks gaue to little Almesse, and set vnable persons many times

\* Ex libello dicto,  
The complaint of  
Roderik Mors  
sometime a Gray  
Friar &c. olim  
impress. Geneva.



\* faire.

times in their Benefices. But now, where XX. pound was given yearly to the Poore, in more than in C. places in Englande is not one meales meat given. This is a \* faire amendement : Where they had alwaies one or other Vicar, that either preached, or hyred some to preache, now is there no Vicar at all ; but the Farmer is Vicar and Parson altogether ; and onely an old cast-away Monk or Frere, which can scarcely say his Matins, is hyred for XX. or XXX. shillings, meat and drinke, yea in some places for meat and drinke alone, without any wages. I know, and not I alone, but XX. M. moo, know more than D. Vicarages and Parsonages thus well and Gospelly served, after the new Gospell of England. And so the Autor goes on with sharp Admonitions to the Lay men, that fed themselves fat with the Tithes of such Churches, while the soules of the Parishioners suffered great famine for want of a fit Pastor ; that is, for want of fit maintenance for him. for without that, he is scarce to be hoped for.

But we conclude with that of the Canon Laws getting such force, and making such alteration in matter of Tithes about the yeer M. C C. when through it, Parochiall payment became first to be performd here, or elsewhere, generally, and as of common right (where other titles preuented it not) and through it only ; nor through the ancients secular Laws made here for Tithes. For the suits for them in the Spirituall Courts either were all grounded vpon the Canons ; or the common right of Tithes was now supposed in the Libell as a known dutie to the Clergie, without secular Law. It may soon be apprehended, that it was much lesse difficult about that time, then any other, for the Popes and their Canon-Laws to gaine more obedience among subiects, and execute more autoritie ouer Lay possessions, when also they so easily vsurpt power ouer supreme Princes, which yeelded to them. For no time euer was, wherein any of them more insolently bare themselves in the Empire, neuer neere so insolently in England, as in the continuing times next before and neere about this change. And to all States the Church of Rome now grew most formidable. Remember but the Excommunication and Correction suffered by Frederique Barbarossa, Henry the sixt, and other Princes of the Empire, and by our Henry the second, and King Iohn. the stories of them are obuious. And our Richard the first, betwene those two, to gratifie the Clergie here for their exceeding liberalitie, in contribution to his Ransome from Captiuitie, with great fauor gaue them an indulgent Charter<sup>h</sup> of their Liberties ; which being ioined with those other prone and yeelding Admissions of the Ecclesiastique Government ouer the Crown (so were the times) doubtlesse gaue no small autoritie to the Exercise of the Canon Law in those things, which before about that time were diuersly otherwise. Neither was that part of the Canon Law, which would haue a Generall and Parochiall payment of Tithes, nor only second to any, in regard of the Clergie's profit ; but also none other, doubtlesse, was so great as it, in gaining the Clergie a

dire&amp;

<sup>h</sup> Apud Innocent.  
3. epist. Decretal.  
lib. 2. pag. 242.  
edit. Colon.

direct and certain Reueneue. Therefore it was not without reason on their side, at such time as they saw the Power of *Rome*, that is, the autoritie of Decretals and of the Canons grow most dreadfull to Prince and subiect, that they should vrge this on to a continuing practise, and that with execution of the raigning Censures of the Church. Hence haue the Canons, in this point, hitherto here continued, and haue been and are binding Ecclesiastique Lawes, sauing wherein the later expresse Laws of the Kingdome crosse them. And thus out of the qualitie of the time, with regard to the practised insolencie of the Pope and his Clergie, in putting their Canons and Decretals in execution, that receiued generall practise of Parochiall payment (neere almost according to the Canons) and other such alterations, that suddenly varied from former vse, and from the libertie of the Lay subiect, must haue its originall; not from any want of the Canons of the Church of *Rome*, as if they had not been here at all had or read, before about that time. For doubtlesse, the Canon Lawes were here vied and practised as farre forth as the Clergie could make the Laitie subiect to them. For, about D. yeers before this alteration, good testimonie is of the publique and solemne receiuing of the *Codex Canonum vetus Ecclesie Romane* (mentioned by old Popes <sup>i</sup> for the eldest and most authentique Bodie of the Canon Law of the Western Church) and that in a Nationall Synod held in D. C. LXX. vnder *Theodore* and *Wilsfrid* Archbishops; where, with one voice, the Clergie answered *Theodore*, *Optime & omnibus placet quacunq; definierunt Sanctorum Canones patrum nos quoque omnes alacri animo libentissimè seruare. quibus statim* (sayes *Theodore*) *protuli eundem librum Canonum &c.* But at that time there was no Law for Tithes, or mention of them in the known Canon Law of the Church of *Rome*, or in any other Prouinciall Canons, sauing in that of the second Synod of *Mafcon*. Afterward also we find the *Leges Episcopales* <sup>i</sup>, which were seuerd by *William* the first from the *Hundred*, and confined to the *Bishops Consistorie*; that wee may omit the Nationall or Prouinciall Constitutions of this Kingdome, made in those elder times, according to the old Canons of the Church of *Rome*. And X. yeers before *Gratians* Decree writen, it is certaine, that the Canons of the Church, generally by the name of *Canones* and *Canonum Decreta* (for diuers collections were of them, and some also confirmd by Papall autoritie, beside the *Codex Vetus*, before that of *Gratian*) were familiarly talkt of and vrged in that great <sup>m</sup> Controuersie in the Synod of *Winchester*, in the fourth yeere of King *Stephen*, touching the Castles of *Newmarke*, *Salisbury*, and the *Vies*; where the King denied vterly, *Censuram Canonum pati*; that is, to haue it determined by them, whether, or no, the two Bishops, *Roger* of *Salisbury*, and *Alexander* of *Lincolne*, might lawfully keepe their Castles that they had fortified. But while the rest of the Bishops stood so much vpon their

i *Dist.* 19. c. 1. *Si Romanorum. Dist.* 20. c. de *Libellis*.

k *Beda hist. Eccles.* lib 4 cap. 5.

l *Vide Cap.* 14. §. 2.

m *G. Mahne. b. hist. Nouell. lib. 2. pag.* 103. b.

Canons, and euen in the face of Maiestie profess a rebellion, the King and the Lay subiects, it seems, grew so exasperated against them, that by publique command, for preferuation of the libertie of the Crown and Laitie, they were forbidden to be of any more vse in the Kingdom. For so perhaps is that to be vnderstood (as we haue elsewhere<sup>n</sup> noted) in *Iohn of Chartres*, o where he saies, that *Tempore Regis Stephani à regno iussit Leges Romanae quas in Britanniam domus Venerabilis Patris Theobaldi Britanniarum Primatis asseruerat. Ne quis etiam libros retineret, edicto Regio prohibitum est.* What he calls *Leges Romanae*, the most learned Frier Bacon mentioning the same storie, styles *Leges Italiae*, and takes them for the *Roman Imperialls*, and not for the *Canon Law*. I confesse, I see not enough clearly here to iudge (vpon the word of *Iohn of Chartres*) whether it were the *Canons* or the *Imperialls*. on the one side, If we say he meant that *Theobald* or his Clergie, brought the *Roman Canon Law*; it might so seem as if it had not been here before in the hands of the Clergie, nor partly practised by them. Which doubtlesse is otherwise. If on the other side we vnderstand the *Imperialls* (Copies of which indeed might well be at that time brought as a noueltie hither; for they were then newly found; and plainly in *Henric* the seconds time, they were here in the hands of the more curious Scholers, as you may see by *Iohn of Chartres* his citing of them) how then is that true which he presently after saies of the encreasing power and force of those *Leges Romanae*? Sed, saith he, *Deo faciente eo magis virtus legis inuauit quo eam amplius nitebatur impietas infirmare.* What force or power at all had the *Imperialls* here afterward? where is any signe of it? But the obiection against that which might proue them not to haue been the *Canon Laws*, may not difficultly perhaps be answered. It is true that the *Canons of Rome* were here before, and read, and partly practised in the Church. But diuers Collections were of them about this age of King *Stephen*, and perhaps some later and larger Collection might be brought hither by Archbishop *Theobald*, or some of his Clergie, which are vnderstood, I think, in that *Domus Venerabilis Patris Theobaldi*. He himselfe perhaps might bring *Iuo's* Decree (when he came from *Rome* in 3. of King *Stephen*) and endeavour the strict practice of it here; which the King and the Lay subiect had reason enough to dislike) or some of his Clergie might perhaps afterward bring in *Gratians* Decree, that was both compild by *Gratian* and confirmed by Pope *Eugenius* the third, about ten years before *Theobalds* death, that is, about 16. of King *Stephen*. and this way those words of *Legis virtus inuauit*, may haue their truth. For howeuer that opposition against the *Canon Law* were, it is most certain that this first part of the body of it (the Decree) was presently vpon the first publication of it in vse in *England*, and familiarly cited by such Diuines as talk of what had reference to it. witness especially *P. Giraldu Cambrensis* in his Epistles. and the practice of the *Canon Law* here for the time

n. *Ian. Angl. lib. 3.*  
 §. 43. vide, si placet. *Nor. ad For.*  
 vifc. pag. 43. & 44.  
 o. *De iuris Christiani*, lib. 3, cap. 22.

p. *In Symbol. christ.*  
 M. in Bibl. Cor.

time of *Henrie the second*, is seen in the Epistles of that *Iohn of Charches*; which yet remain and are, I think, the ancientest examples of proceedings in our spirituall Courts. But notwithstanding that first part of the body of the *Canon Law*, which expressly commanded Tithes to be generally paid, were here soon receiued among the Clergie; yet about L. yeeres after that, the former course of *Arbitrarie Consecrations* of them continued: and both that and the rest of those courses in disposition of Churches-reuenues which so differ from the Canons, and from the practice of this day, was not fully altered till some *Decretalls* came hither with more powerfull and dreadfull autoritie (as the times were) of some of the following Popes, especially of *Alexander the third*, and *Innocent the third*, which two alone, I think, sent as many commanding *Decretalls* into euery Prouince as all their Predecessors had before done; and especially into *England*, as is already shewd, they sent diuers (only for the matter of Tithes) which were all first of Papall autoritie for the particular ends for which they were sent, and so were obeid as *Canon Law*, although none of them became parts of the *generall Canon Law* vntill *Gregorie the ninth* put some of them into his *Decretalls* autorised by him in the yeer M. CC. XXX. about which time perhaps and diuers yeeres before, the *Canon Law* of *Rome* was not only read here priuately among the Clergie, but professed also in Schooles appropriated to it. so I ghesse is that close Writ of 19. *Hen. 3.* to be vnderstood, which prohibited the holding of *Schola Legum* in *London*. it was directed to the Maior & Shrifes commanding them, *Quod per totam Ciuitatem London Clamari faciant & firmiter prohiberi ne aliquis Scolar regens de Legibus in eadem Ciuitate de cetero ibidem Leges doceat. Et si aliquis ibidem fuerit huiusmodi Scolar regens ipsum sine dilatione cessare faciat T. Rego apud Basing. XI. die Decembris.* This was five yeeres after the *Decretalls* published. and it seems most probable, that these *Leges* were *Canon Laws*, perhaps mixt (as vsually they were) in the profession also with the *Imperials* (for both of them were, it seems, studied here vnder *Henrie the third* by the Clergie, more then any other part of learning) and therefore were forbidden as being both, in regard of their own autoritie, against the supreme Maiestie and independencie of the Crown of *England*.

q (laus. 19. Hen. 3.  
memor. 22.

r videlicet 39. Hen. 3.  
apud Mart. Paris  
lib. 4. maior. a. d.  
1255.

*The end of the Review.*

*The ancient Records, and other  
Manuscripts,*

*Used in this Historie of Tithes; with references to the places where they are cited, and to the Offices and Libraries wherein they remain. they are specially therefore here collected that the more learned Reader (being perhaps, out of his owne Studies, furnished with the most or all of what we haue out of printed Testimonies) may at one view, without pains of reading the whole, be directed to all of them. I presumd be might wish for such a collection; which was neither difficult for me to make; nor will it be hard for any man that hereafter transcribes or Prints it, to alter the numbers of the Pages according to his transcribed or printed Copie. the Margine will easily help him.*

*Records in the Tower of London.*

Of the time of	{	King Ethelbert, p. 212.	{	Edward the first, p. 364.
		William the first, pag.		435. 438.
		351. 413. 483.		Edward the 2. p. 308.
		William the 2. p. 416.		436.
		Henrie the first, p. 315.		Of the Edward the 3. p. 106.
		352. 353. 417.		time of 176. 237. 238. 239.
		Henrie the 2. p. 350.		240. 241. 436. 441.
		351. 445.		442. 443.
		King Iohn, chap 2. §. 8.		Henrie the 4. p. 142. 373
		& p. 352. 353. 387.		Henrie the fifth, p. 369.
	{	445.		With these I reckon also that
		Henrie the 3. chap. 6.		book of <i>Parlements</i> (for the most
		§. 2. & pag. 194. 265.		part, of the time of <i>Ed. 1.</i> ) remain-
		267. 284. 286. 352.		ing in the hands of that court-
		358. 391. 423. 435.		teous and worthy Gentleman
		436. 437. 414. 445.		M <sup>r</sup> I. Borrough, it is cited, pag. 185.
		446. 491.		286. 366. 367.

## In the Office of *Receipt* of the *Exchequer.*

The Booke of <i>Domesday</i> ,	p.101.116.179.180.181.361.405.481.
Records of the time of	<i>Richard the first</i> ,
	<i>King Iohn</i> ,
	<i>Edward the first</i> ,
	<i>Edward the second</i> ,
	<i>Edward the third</i> ,

p.374.381.386.
p.381.383.384.439.440.
p.366.367.389.390.432.
p.448.
p.368.

## In the Office of the Kings *Remembrancer.*

The *Red Booke* of the Exchequer.

pag. 227.

## In the *Princes* Librarie.

King *KNOW*'s Laws (pag 223 224.) It is a most ancientest and perfite Copie of them in *Latin*.

## In the publique Librarie of *Oxford*.

<i>Iohannes Anglicus</i> his <i>Historia Au-</i> <i>rea.</i>	pag. 275.	An Epistle of the Vniuersitie (touching Personall Tithes)
The Legend of the Lord and Parson of <i>Cometon</i> , at the end of <i>Iohannes de Grandiso-</i> <i>no</i> his life of <i>Thomas Becket.</i>	ibid.	to the Conuocation of the Clergie.
		p.172.
		<i>Thomas Elmham</i> Prior of <i>Lenton</i> his Chronicle of <i>Henrie</i> the fift.
		Chap. 1. § 4.

## In the *Inner Temple* Librarie.

The yeers of *Edward* the second at large.

pag. 481.

## In the Librarie at *Paules*.

*Ioh* his *Decreta*, Chap. 5. §. 5. twice.

# In Sir Robert Cottons Librarie.

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Leiger-  
bookes  
of the

- Church of *Utrecht*,  
chap. 5. § 2. in  
marg. & chap. 6.  
§. 2.
- Abbey of *Abingdon*,  
chap. 5. §. 3. & p.  
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&c. to 306. 419.  
430. 482.
- Church of *Worcester*,  
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- Nunnerie of *Chartris*  
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- Abbey of *S. Albons*,  
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- Fridergodus*, pag. 271. And a Bull  
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- Bernardus Morlanenſis*, pag. 118
- Iuo's* *Epifſles*, pag. 135
- A Volume of *Decretall Epifſles*,  
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- Hiſtoria Iornallenſis*, written by *Iohn*  
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261. & 277.) and some Decrees of *Odo* Archbishop of *Canterburie* are bound vp with it, cited pag. 217. And in the same Volume, the life of *S. Cadoc.* pag. 276
- A Councell vnder King *Eitbelred*, pag. 210. 211. 222.
- A Book full of late collections out of some *Saxon* and *Latin* Moniments of this Kingdom, in a large 4. pag. 225. 226. 227.
- Lanfrank's* Epistles, pag. 227
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- Fulcardus Durobernenfis*, pag. 272. and in the same Volume a Bull of *Gregorie* the ninth, and a Charter of *Atbelstan*, cited pag. 271. & 272. and a Writ to the Shire of *Yorke* about Tithes, pag. 417
- Turgotus Prior Dunelmensis*, pag. 276.
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- Anselmus* Epistles, pag. 376. 377. the published copie wants verie manie.
- Girardus Cambrensis* his *Symbolum elictorum*. p. 382. 383. 490
- Matriculus Ecclesiarum in Archidiacon. Leiceſt.* p. 385
- Radulphus de Diceto*, p. 388. 389
- The ancientest Book of *Ely*, p. 412.
- The Epistles of *Robert Grossetest*, p. 430. 431.
- The historie of *Lichfield*, p. 482
- Guilielmus Pictauiensis* his life of *William* the first, p. 483. It is now on the Presse at *Paris*, with other things belonging to *Normandie*.

## In the Librarie of Mr. *Tho. Allen* of *Gloceſter* Hall.

- Robert of Gloceſter*, pag. 206
- Annales* of the Monasterie of *Burton*, pag. 216. 229. in margin. 232. 266. 422. 429. 433. And in that Volume are bound *Constitutiones euiſidam Episcopi*, cited pag. 231.
- Turgotus Dunelmensis*, pag. 229. in marg. & 276.

## In Mr. *Patrik Tongs* Librarie.

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